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इस भाग में थिन पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on 15th May, 2007:—

I

BILL No. XXXVI OF 2007

A Bill further to amend the Motor Vehicles Act, 1988.

Be it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Motor Vehicles (Amendment) Act, 2007.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

59 of 1988.

2. In section 2 of the Motor Vehicles Act, 1988 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(i) after clause (3), the following clause shall be inserted, namely:—

(3A) “Carriage for persons with disability” means a motor vehicle specially designed and constructed for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;—

(ii) after clause (4), the following clause shall be inserted, namely:—

‘(4A) “common carrier” means a person engaged in the business of collecting, storing, forwarding or distributing goods to be carried by goods carriages under goods receipt or transporting for hire, of goods from place to place, by motorised transport on road, for all persons indiscriminately and includes a goods booking company, contractor, agent, broker and courier agency, but does not include the Government.

Explanation.— For the purpose of this clause, courier agency means an agency engaged in the door to door transportation of documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;’;

(iii) for clause (8), the following clause shall be substituted, namely:—

(8) “dealer” includes a person who is engaged—

(a) in building bodies for attachment to chassis; or

(b) in the business of hypothecation, leasing or hire purchase of motor vehicles; or

(c) in the manufacture of motor vehicles; or

(d) in the sale of motor vehicles on the authority of a motor vehicle manufacturer’;

(iv) clause (18) shall be omitted;

(v) in clause (28), after the words “twenty-five cubic centimetres”, the words “or a battery operated vehicle equipped with motor having a thirty minutes power of less than 0.25 Kilowatt” shall be inserted;

(vi) after clause (28), the following clause shall be inserted, namely:—

‘(28A) “multi-axle vehicle” means a vehicle having more than two axles.’

3. In section 7 of the principal Act,—

(i) in sub-section (1), for the words “one year”, the words “two years” shall be substituted;

(ii) in sub-section (2), for the words “motor cycle without gear”, the words, figures and letters “motor cycle with engine capacity not exceeding 50 cubic centimetres or battery operated motor cycles equipped with a motor having a thirty minute power of less than 0.50 Kilowatt” shall be substituted.

4. In section 8 of the principal Act, in sub-section (5), the following proviso shall be inserted, namely:—

“Provided that the licensing authority may exempt the applicant from the test to drive a motor vehicle (not being a transport vehicle) if the applicant possesses a driving test certificate issued by an institution or automobile association recognised in this behalf by the State Government.”

5. In section 9 of the principal Act, in the second proviso to sub-section (3), after the words, “issued by any institution”, the words “or automobile association” shall be inserted;

6. In section 10 of the principal Act,—

(i) in sub-section (1), for the words “such form”, the words “such form, including electronic form” shall be substituted;

Amendment
of section 7.

Amendment
of section 8.

Amendment
of section 9.

Amendment
of section 10.

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) A learner’s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

- (a) motor cycle with engine capacity not exceeding 50 cubic centimetres;
- (b) motor cycle with engine capacity exceeding 50 cubic centimetres;
- (c) battery operated motor cycles of a specified description;
- (d) carriage for persons with disability;
- (e) light motor vehicle non-transport;
- (f) transport vehicle of either description such as three wheelers, light motor vehicles, medium goods or passenger motor vehicles, heavy goods vehicles, heavy passenger vehicles and such other categories of vehicles as may be prescribed;
- (g) road-roller;
- (h) any other motor vehicle of a specified description.”.

7. In section 15 of the principal Act,—

(i) in the second proviso to sub-section (1), for the words “the age of forty years”, the words “the age of fifty years” shall be substituted;

(ii) in the second proviso to sub-section (4), for the words “five years after the driving licence has ceased”, the words “one year after the driving licence has ceased” shall be substituted.

8. In section 17 of the principal Act,—

(i) in sub-section (2), after the words, “to the prescribed authority which shall decide the appeal”, the words “as far as practicable, within a period of forty-five days from the date of filing of such appeal” shall be inserted;

(ii) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that in the event of the appeal being disposed of after the period so specified, the prescribed authority shall record in writing, the reasons for the same at the time of disposing the said appeal.”.

9. In section 21 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Where the authority authorised to check the driving licence of any driver, is satisfied after breath analyzer test or any other test as may be prescribed by the State Government that the driver is under the influence of alcohol, may suspend the driving licence on the spot for a period not exceeding three months.”.

10. In section 28 of the principal Act, in sub-section (2), clause (k) shall be renumbered as clause (m), and before clause (m) as so renumbered, the following clauses shall be inserted, namely:—

“(k) construction of driving tracks, their use and the fee to be charged for use of driving tracks;

(l) issue of special licence for instructor of the driving school, the qualifications of such instructor and remuneration payable to such instructor.”.

Amendment
of section 15.

Amendment
of section 17.

Amendment
of section 21.

Amendment
of section 28.

Amendment
of section 41.

11. In section 41 of the principal Act,—

(i) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The registering authority shall within a period of thirty days issue to the owner of a motor vehicle registered by it a certificate of registration in such form, including electronic form and containing such particulars and information and in such manner as may be prescribed by the Central Government.”;

(ii) in sub-section (11), for the words “such amount not exceeding one hundred rupees”, the words “such amount which shall not be less than one hundred rupees and not more than five hundred rupees for motor cycle and not less than five hundred rupees and not more than one thousand rupees for all other motor vehicles” shall be substituted.

Insertion of
new section
49A.

New registration
mark and
no objection
certificate not
required in
case of
temporary
change of
address.

12. After section 49 of the principal Act, the following section shall be inserted, namely:—

“49A. Where an owner of a motor vehicle (other than transport vehicle) on which one-time or long-term tax has been paid, ceases to reside at the address recorded in the certificate of registration of the vehicle on account of his transfer on official duty or shift of residence, the registering authority shall, where the vehicle was registered prior to such transfer or shift of residence, on application for no objection certificate under section 48, refund the pro-rata unutilised tax on the vehicle; and the registering authority where the vehicle is being shifted shall levy and collect pro-rata tax for the remaining valid period of registration of such vehicle.”.

Amendment
of section 50.

13. In section 50 of the principal Act, for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority or the last registering authority, as the case may be.”.

Amendment
of section
51.

14. In section 51 of the principal Act,—

(i) in sub-section (2), for the words “if the last registering authority is not the original registering authority”, the words “or the last registering authority, as the case may be, by registered post with acknowledgment due” shall be substituted;

(ii) in sub-section (11), after the words “ shall intimate the financier of such transaction”, the words “by registered post with acknowledgment due” shall be inserted.

Amendment
of section 52.

15. In section 52 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Subject to the provisions made under sub-sections (1), (2), (3) and (4), any registered owner holding a vehicle under hire purchase agreement, lease or hypothecation shall not make any alteration to the vehicle except on the approval of the registering authority and with the written consent of the financier.”.

Amendment
of section 57.

16. In section 57 of the principal Act, in sub-section (2),—

(i) for the words “The appellate authority”, the words “The prescribed authority” shall be substituted;

(ii) after the words “as it thinks fit”, the words, “within a period of sixty days from the date of filing the appeal under sub-section (1) of this section” shall be inserted;

(iii) the following proviso shall be inserted, namely:—

“Provided that in the event of the appeal being disposed of after the period so specified, the prescribed authority shall record in writing, the reasons for the same at the time of disposing the said appeal.”.

17. In section 58 of the principal Act, in sub-section (3), for the proviso, the following proviso shall be substituted, namely:—

“Provided that where it appears to the Central Government that heavier weights than those specified in the notification under sub-section (1) may be permitted for vehicles of a particular type, the Central Government may, by order in the Official Gazette direct, that the provision of this section shall apply with such conditions and modifications as may be specified in the order.”

18. In section 67 of the principal Act, in sub-section (1),—

(a) in clause (i), after the words “goods carriages”, the words “or constituting an independent regulator for fixation of such fares and freights;” shall be inserted;

(b) in clause (iii), after the words “goods traffic”, the words “or for laying down quality of service requirements for operators;” shall be inserted;

(c) after clause (iii), the following clause shall be inserted, namely:—

“(iv) regarding determination of routes for plying stage carriages.”

19. In section 68 of the principal Act, in sub-section (3), clause (ca) shall be omitted.

20. In section 71 of the principal Act, in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

“(a) The State Government may, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns.”

21. In section 74 of the principal Act, in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

“(a) The State Government may, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns.”

22. In section 88 of the principal Act, in sub-section (8), for the words “made under this Act by the Central Government”, the words “notified under this Act by the State Government in the Official Gazette” shall be substituted.

23. In section 89 of the principal Act, in sub-section (1),—

(i) in clause (g), after the words “give a decision thereon”, the words “within a period of forty-five days from the date of such appeal” shall be inserted;

(ii) after clause (g), the following proviso shall be inserted, namely:—

“Provided that in the event of the appeal being disposed of after the period so-specified, the State Transport Appellate Tribunal shall record in writing, the reasons for the same at the time of disposing the said appeal.”

24. For section 93 of the principal Act, the following section shall be substituted, namely:—

“93. (1) No person shall engage himself—

(i) as an agent or a canvasser, in the sale of tickets for travel by public service vehicles or in otherwise soliciting customers for such vehicle; or

Amendment of section 58.

Amendment of section 67.

Amendment of section 68.

Amendment of section 71.

Amendment of section 74.

Amendment of section 88.

Amendment of section 89.

Substitution of new section for section 93.

Agent or canvasser or common carrier to obtain registration.

(ii) as an agent in the business of collecting, forwarding or distributing goods carried by goods carriage; or

(iii) as a common carrier,

unless he has obtained a registration from such authority and subject to such conditions as may be prescribed by the State Government.

(2) The conditions referred to in sub-section (1) may include all or any of the following matters, namely:—

(a) the period for which a registration may be made or renewed;

(b) the fee payable for the registration or its renewal;

(c) the deposit of security—

(i) of a sum not exceeding fifty thousand rupees in the case of an agent in the business of collecting, forwarding or distributing goods carried by goods carriage,

(ii) of a sum not exceeding five thousand rupees in the case of any other agent or canvasser,

(iii) of a sum not exceeding one lakh rupees in the case of a common carrier, and the circumstances under which the security may be forfeited;

(d) the provision by the agent of insurance of goods in transit;

(e) the authority by which and the circumstances under which the registration may be suspended or cancelled;

(f) such other conditions as may be prescribed by the State Government.

(3) It shall be a condition of every registration that no agent or canvasser or a common carrier to whom the registration is permitted shall advertise in any newspaper, book, list, classified directory or other publication unless there is contained in such advertisement appearing in such newspaper, book, list, classified directory or other publication, the registration number, the date of expiry of the period of registration and the particulars of the authority which permitted the registration.”.

Amendment
of section
100.

25. In section 100 of the principal Act, in sub-section (3), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the previous approval of the Central Government shall not be required in a scheme covered under inter-State agreement between two or more concerned States.”.

Amendment
of section
110.

26. In section 110 of the principal Act, in sub-section (1),—

(i) for clause (f), the following clause shall be substituted, namely:—

“(f) specifications of speed governors;”;

(ii) clause (o) shall be omitted;

(iii) after clause (p), the following clauses shall be inserted, namely:—

“(q) design of the bodies for goods carriage and medium or heavy passenger vehicles and the material to be used for such bodies;

(r) cabin design on a bare chassis;

(s) the conditions for the purpose of licensing and regulating the establishments for fabrication of bus or truck bodies on bare chassis;

(t) the placement of audio-visual or radio or tape recorder type of device in the transport vehicle;

(u) seating arrangements in public service vehicles and the protection of passengers against the weather; and

(v) any matter relating to construction equipment, maintenance of motor vehicles, trailers and fitness of all categories of motor vehicle.”

27. In section 111 of the principal Act, in sub-section (2),—

(i) in clause (f), the word “and” shall be omitted;

(ii) after clause (f), the following clauses shall be inserted, namely:—

“(g) installation of speed governors in transport vehicles; and

(h) installation of fog lights in motor vehicles.”

28. In section 113 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) If on the basis of documents in possession of the person in charge of the vehicle at the time of checking is established that the load carried is in excess of the prescribed ceilings, the checking authorities shall presume that the offence was committed with the knowledge of or under the orders of the consignor or the common carrier whosoever has issued the said documents and in such an event the penalty shall be on such consignor or as the case may be, the common carrier:

Provided that in case the overloaded vehicle is carrying goods of more than one consignor, responsibility shall rest with the common carrier who engaged the vehicle:

Provided further that if the vehicle with such overloaded goods is operating under the charge of the owner or the driver himself, then the responsibility shall lie with such owner or the driver, as the case may be.”

29. In section 114 of the principal Act, in sub-section (1), for the words “he may, by order in writing, direct the driver to off-load the excess weight at his own risk and”, the words “he shall, by order in writing, direct the driver to off-load the excess weight at his own risk and cost and” shall be substituted.

30. In section 130 of the principal Act,—

(i) in sub-section (1), in the proviso, for the words “or other acknowledgment issued”, the words “issued in a prescribed form” shall be substituted;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Any police officer or an officer authorised by the Motor Vehicles Department shall display his identity card and establish his identity, before seeking any such document from the driver or owner of the motor vehicle.”

31. Chapter X of the principal Act shall be omitted.

Omission of Chapter X.

32. In section 145 of the principal Act,—

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) “authorised insurer” means an insurer for the time being carrying on general insurance business in India duly licensed by Insurance Regulatory and Development Authority constituted under section 3 of the Insurance Development Authority Act, 1999 and any Government insurance fund authorised to do general insurance business under the General Insurance Business (Nationalisation) Act, 1972;”;

(ii) in clause (c), for the word and figures “section 140”, the words, figures and letters “section 163A or as the case may be, section 163B” shall be substituted.

Amendment of section 111.

Amendment of section 113.

Amendment of section 114.

Amendment of section 130.

Omission of Chapter X.

Amendment of section 145.

(iii) after clause (g), the following clause shall be inserted, namely:—

(h) “permanent disablement” means permanent disablement of a person resulted from an accident, arising out of use of a motor vehicle or motor vehicles and if such person has suffered by reason of the accident, any injury or injuries involving—

- (i) permanent privation of the sight of either eye or the hearing of either ear or privation of any member or joint; or
- (ii) destruction or permanent impairing of the powers of any member or joint; or
- (iii) permanent disfigurement of the head or face.’.

Amendment
of section
147.

33. In section 147 of the principal Act, in sub-section (2),—

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) save as provided in clause (b), the amount of liability as per section 163A or the award given by the court in terms of section 163B;”;

(ii) the proviso shall be omitted.

Amendment
of section
149.

34. In section 149 of the principal Act,—

(i) in sub-section (1), after the words “or may have avoided or cancelled the policy”, the words, letters, figures and brackets “except where the policy is void on the grounds of non-disclosure or misrepresentation or because of non-receipt of premium as required under section 64VB of the Insurance Act, 1938 read with clause (b) of sub-section (2) and sub-section (4) of this section” shall be inserted;

4 of 1938.

(ii) in sub-section (2),—

(I) in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) a condition excluding driving by a named person or persons or by any person who is not duly licenced to drive the vehicle in terms of sub-section (1) of section 3 or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or”;

(II) in clause (b), after the words “in some material particular”, the words, letters and figures “or because of non-receipt of premium as required under section 64VB of the Insurance Act, 1938” shall be inserted.

4 of 1938.

(III) after clause (b), the following clause shall be inserted, namely:—

“(c) that the insurer on acceptance of the policy shall have the right to contest the claim on any relevant ground including the quantum.”

(iii) after sub-section (7), the following sub-section shall be inserted, namely:—

“(8) If on the date of filing of the petition, the claimant is not aware of the insurance company with which the vehicle had been insured, it shall be the duty of the owner of the vehicle who is a respondent to the petition to furnish to the Tribunal or court the information as to whether the vehicle had been insured on the date of the accident and if so with which company it is insured or the vehicle was not covered under any insurance on the date of accident.”.

Amendment
of section
151.

35. In section 151, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) It shall be obligatory on the part of the owners of the transport vehicles to keep a photocopy of the driving licence of the driver employed and deliver an attested copy of the same along with an attested copy each of the registration certificate and permit to the insurers on demand.”.

Amendment
of section
157.

36. In section 157 of the principal Act, in sub-section (2), for the words “The transferee shall apply within fourteen days”, the words, “The transferee shall apply within thirty days,” shall be substituted.

37. For section 161 of the principal Act, the following section shall be substituted, namely:—

45 of 1860.

“161. (1) For the purposes of this section, section 162 and section 163—

(a) “grievous hurt” shall have the meaning assigned to it in the Indian Penal Code, 1860;

(b) “hit and run motor accident” means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained inspite of reasonable efforts;

(c) “scheme” means the scheme framed under section 163;

(d) “Solatium Fund” means the Fund established under sub-section (2).

(2) The Central Government may, by notification in the Official Gazette, establish a Fund to be known as the Solatium Fund.

(3) The Solatium Fund shall be utilised for paying, in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(4) The Insurance Regulatory and Development Authority or any other agency specified by the Central Government shall manage the Solatium Fund.

(5) The Insurance Companies shall make such contribution to the Fund as the Central Government may, from time to time, by order specify.

(6) Subject to the provisions of this Act and the scheme, there shall be paid as compensation out of the Solatium Fund,—

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of fifty thousand rupees;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees.

(7) The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section.”.

38. After section 161 of the principal Act, the following section shall be inserted, namely:—

“161A. (1) The Central Government may, by notification in the Official Gazette, make a scheme specifying the authority in which the Solatium Fund shall vest, the manner in which the Fund shall be administered, the form, manner and the time within which applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the Fund and the payment of compensation therefrom.

(2) A scheme made under sub-section (1) may provide that—

(a) a contravention of any provision thereof shall be punishable with fine which may extend to such amount as may be specified but in no case exceeding five thousand rupees;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated, with the prior approval of the Central Government, by such officer or authority to any other officer or authority;

Substitution of new section for section 161.

Special provisions as to compensation in cases of hit and run motor accident.

Insertion of new section 161A.

Scheme for administration of Solatium Fund.

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

(3) Every scheme made under this section shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to validity of anything previously done under that scheme.”.

Omission of section 163.

Substitution of new section for section 163A.

Special provisions as to payment of compensation on structured formula basis.

39. Section 163 of the principal Act shall be omitted.

40. For section 163A of the principal Act, the following section shall be substituted, namely:—

“163A. (1) Notwithstanding anything contained in this Act or in any other law for time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer, in case a valid insurance policy subsists, as defined under section 145, shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, in the manner provided in the Second Schedule to the legal heirs or the victim, as the case may be.

Explanation.— The expression “permanent disability” shall, subject to clause (h) of section 145 have the meaning assigned to such expression and the extent as in the Workmen’s Compensation Act, 1923;

8 of 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living, by notification in the Official Gazette, from time to time revise the amount or the multiplier specified in the Second Schedule.”.

Substitution of new section for section 163B.

Compensation in cases not claimed on structured formula basis.

41. For section 163B of the principal Act, the following section shall be substituted, namely:—

“163B. (1) A person not preferring to claim compensation under section 163A may claim compensation under this section from the Motor Accidents Claims Tribunal or a civil court, as the case may be.

(2) In such a case the onus for proving any wrongful act, neglect or default of the owner or driver of the motor vehicle causing the accident shall rest on the person claiming such compensation:

Provided that if a person preferring a claim under this section fails to prove such wrongful act, neglect or default of the owner or driver, his claim shall be determined as per the provisions contained in section 163A.

(3) A claim filed before the Motor Accidents Claims Tribunal or a civil court shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the claim within a period of two years from the date of its filing:

Provided that no adjournment shall be ordinarily granted by the Motor Accidents Claims Tribunal or a civil court, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Tribunal or court:

Provided further that the Motor Accidents Claims Tribunal or a civil court, as the case may be, shall make such orders as to the cost occasioned by the adjournment as it may consider necessary:

Provided also that in the event of a claim being disposed of after the period so specified, the Motor Accidents Claims Tribunal or a civil court, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said claim."

42. After section 163B of the principal Act, the following section shall be inserted, namely:—

"163C. Where a person is entitled to claim compensation under section 163A and section 163B, he shall claim the relief only under one of the said sections and the option once exercised shall be final."

43. In section 165 of the principal Act, in sub-section (1), in *Explanation*, for the words, figures, and letter "section 140 and section 163A" the words, figures and letters "section 163A or as the case may be, section 163B" shall be substituted.

44. In section 166 of the principal Act,—

(i) in sub-section (2), the proviso shall be omitted.

(ii) after sub-section (4), the following sub-sections shall be inserted, namely:—

"(5) Notwithstanding anything contained in the Motor Vehicles Act, 1939, or any law for the time being in force, in respect of claims for compensation under the said Act which are pending at any stage, at the date of commencement of the Motor Vehicles (Amendment) Act, 2007 in a Claims Tribunal or court, the right of an injured person to claim compensation shall upon the death of injured person be available to his legal representative, irrespective of whether the cause of death was relatable to or had any nexus with the injury or not:

Provided that in case where the cause of death is not relatable to or has no nexus with the injury, the compensation shall be restricted to the period between the date of injury and the date of death of the person so injured.

(6) No application for compensation shall be entertained unless it is made within three years of the occurrence of the accident subject to the general principles provided in the Limitation Act, 1963."

45. In section 167 of the principal Act, the words and letter "without prejudice to the provisions of Chapter X" shall be omitted.

46. After section 167 of the principal Act, the following section shall be inserted, namely:—

"167A. Notwithstanding anything contained in section 166 and section 168, an insurer shall endeavour to settle the claims out of the Tribunal or a civil court under section 163A and section 163B directly with the claimant either *suo motu* or on receipt of a notice within a period of three months, by mutual consent and on receipt of the compensation by the claimant, the Tribunal or the court shall, if satisfied that a lawful compromise or agreement has been arrived at by them, dispose of the application filed by the claimant in this regard.

Insertion of new section 163C.

Option to claim.

Amendment of section 165.

Amendment of section 166.

4 of 1939.

36 of 1963.

Amendment of section 167.

Insertion of new section 167A.

Compromise by insurer and claimant.

9 of 1872.

Explanation.—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this section."

Amendment
of section
168.

47. In section 168 of the principal Act,—

(i) in sub-section (1), the proviso shall be omitted;

(ii) in sub-section (3), for the words “within thirty days”, the words “within sixty days” shall be substituted.

Substitution
of new
section for
section 171.

Award of
interest where
any claim is
allowed.

48. For section 171 of the principal Act, the following section shall be substituted, namely:—

“171. Where any Claims Tribunal or a civil court allows a claim for compensation made under this Act, such Tribunal or the court, as the case may be, may direct that in addition to the amount of compensation, simple interest at two hundred basis points (two per cent.) above the ‘Bank Rate’ (prevailing on the date of award as notified by the Reserve Bank of India) shall also be paid from such date not earlier than the date of making the claim as it may specify in this behalf.”

Insertion of
new section
171A.

Interim
payment in
case of claim
for
compensation.

49. After section 171 of the principal Act, the following section shall be inserted, namely:—

“171A. Notwithstanding anything contained in this Chapter, the Claims Tribunal may award an interim compensation to the victim in respect of death or permanent disability or severe bodily injury or to the claimants against the claim, within three months from the date of filing the application with full particulars provided that such interim compensation shall not exceed:—

(a) one lakh rupees in case of death or permanent total disablement;

(b) fifty thousand rupees in case of permanent partial disablement resulting from loss of a limb or sight of either eye or grievous hurt leading to such disablement.”

Substitution of
new section
for section 177.

50. For section 177 of the principal Act, the following section shall be substituted, namely:—

“177. Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence, be punishable —

(a) for the first offence with a fine of five hundred rupees; and

(b) in the event of any second or subsequent offence with fine of not less than one thousand rupees but which may extend to one thousand five hundred rupees.”

Amendment
of section
180.

51. In section 180 of the principal Act, for the words “or with fine which may extend to one thousand rupees, or with both”, the words “or with fine of not less than one thousand rupees but which may extend to two thousand rupees, or with both” shall be substituted.

Amendment
of section
181.

52. In section 181 of the principal Act, for the words “or with fine which may extend to five hundred rupees, or with both”, the words “or with fine of not less than five hundred rupees but which may extend to two thousand rupees, or with both” shall be substituted.

Amendment
of section
183.

53. In section 183 of the principal Act, for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

(1) Whoever drives a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with a fine of five hundred rupees, or, if having been previously convicted of an offence under this sub-section is again convicted of an offence under this sub-section, with fine of not less than two thousand rupees but which may extend to five thousand rupees.

(2) Whoever causes any person who is employed by him or is subject to his control to drive a motor vehicle in contravention of the speed limits referred to in section 112 shall be punishable with a fine of five hundred rupees, or, if having been previously convicted of an offence under this sub-section, is again convicted of an offence under this sub-section, with fine of not less than one thousand five hundred rupees but which may extend to three thousand rupees.”

54. In section 184 of the principal Act,—

(a) for the words “with fine which may extend to one thousand rupees”, the words, “a fine of one thousand rupees” shall be substituted;

(b) for the words, “or with fine which may extend to two thousand rupees, or with both”, the words “or with fine of two thousand rupees which may extend to five thousand rupees or with both” shall be substituted.

55. In section 185 of the principal Act,—

(a) for the words, “or with fine which may extend to two thousand rupees”, the words “or with a fine of two thousand rupees” shall be substituted;

(b) for the words, “or with fine which may extend to three thousand rupees,” the words “or with fine of three thousand rupees” shall be substituted.

56. In section 186 of the principal Act, for the words “with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees”, the words, “with a fine of five hundred rupees and for a second or subsequent offence with fine of one thousand rupees” shall be substituted.

57. In section 187 of the principal Act, the words, brackets, letter and figures “of clause (c) of sub-section (1) of section 132 or” shall be omitted.

58. After section 187 of the principal Act, the following section shall be inserted, namely:—

45 of 1860. 187A. (1) Without prejudice to the provisions contained in the Indian Penal Code, 1860 whoever drives a motor vehicle in rash or negligent manner and causes injury to a person or damages any property, shall be liable to penalty which may extend to five thousand rupees.

(2) The penalty realised under sub-section (1) shall be credited to the Solatium Fund established under section 161A in such manner as may be prescribed.”

59. In section 192 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine of four thousand rupees which may extend to ten thousand rupees and for a second or subsequent offence with imprisonment which may extend to one year or with fine of ten thousand rupees which may extend to twenty thousand rupees or with both:

Provided that the court may, for reasons to be recorded, impose a lesser punishment.”

60. In section 192A of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or section 79 or section 84 shall be punishable for the first offence with a fine of four thousand rupees which may extend to ten thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine of ten thousand rupees which may extend to twenty thousand rupees or with both:

Provided that the court may, for reasons to be recorded, impose a lesser punishment.”

Amendment
of section
184.

Amendment
of section
185.

Amendment
of section
186.

Amendment
of section
187.

Insertion of
new section
187A.

Liability of a
person while
driving a
motor
vehicle in
certain cases.

Amendment
of section
192.

Amendment
of section
192A.

Substitution of new section for section 198.

Unauthorised interference with vehicle.

Amendment of section 200.

Insertion of new section 213A.

Notification of inspection auditors by State Governments.

Insertion of new section 217B.

Right to claim compensation in certain cases.

Substitution of new Schedule for Second Schedule.

61. For section 198 of the principal Act, the following section shall be substituted, namely:—

“198. Whoever, otherwise than with lawful authority or reasonable excuse enters or moves any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine of five hundred rupees which may extend to one thousand rupees and in case such tampering involves emission control device fitted by the manufacturer, shall be punishable with fine of one thousand rupees which may extend to two thousand five hundred rupees.”.

62. In section 200 of the principal Act, in sub-section (1), for the word and figures “section 194”, the word, figures and letter “section 192A” shall be substituted.

63. After section 213 of the principal Act, the following section shall be inserted, namely:—

“213A. (1) The State Government may, by notification in the Official Gazette, notify such experts in the field of road transport, as it thinks fit for the purpose of carrying out audit of the authorised testing stations set up under sub-section (2) of section 56.

(2) The State Government may make rules to regulate the qualifications, powers and functions of experts notified under sub-section (1).”.

64. After section 217A of the principal Act, the following section shall be inserted, namely:—

“217B. Notwithstanding anything contained in the Motor Vehicles Act, 1939 or any law for the time being in force, in respect of claims for compensation under the said Act which are pending at any stage, at the date of commencement of the Motor Vehicles (Amendment) Act, 2007 in any Claims Tribunal or court, the right of an injured person to claim compensation shall upon his death be available to his legal representative, irrespective of whether the cause of death was relatable to or had any nexus with the injury or not:

Provided that in cases where the cause of death is not relatable or has no nexus with the injury, the compensation shall be restricted to the period between the date of injury and the date of death of the person so injured.”.

65. For the Second Schedule of the principal Act, the following Schedule shall be substituted, namely:—

“THE SECOND SCHEDULE

(See section 163A)

The multiplier applicable for different age groups:—

Age Group (in years)	Multiplier
(1)	(2)
Above 15 years but not exceeding 16	15
Above 16 years but not exceeding 20	16
Above 20 years but not exceeding 25	17
Above 25 years but not exceeding 30	18
Above 30 years but not exceeding 35	17
Above 35 years but not exceeding 40	16
Above 40 years but not exceeding 45	15
Above 45 years but not exceeding 50	13
Above 50 years but not exceeding 55	11
Above 55 years but not exceeding 60	8
Above 60 years	5

Notes:—

1. For death of non-earning persons, a fixed compensation shall be payable:—
 - (a) Rs. 1,00,000 for children up to 5 years of age.
 - (b) Rs. 1,50,000 for persons more than 5 years of age.
2. Minimum amount payable is Rs. 1,00,000.
3. Factors to be considered for working out compensation:—
 - (a) Age of the victim.
 - (b) Multiplier.
 - (c) Annual income up to Rs. 1,00,000 (the maximum annual income for calculation of compensation will be deemed to be Rs. 1,00,000 even if the income exceeds Rs. 1,00,000).
4. Steps for working out compensation:—
 - (a) The proven annual income of the victim is to be worked out.
 - (b) Appropriate multiplier (higher of the multiplier based on the age of the victim and the age of the surviving/dependent parents/spouse/children) to be applied.
 - (c) Multiply the proven annual income by the appropriate multiplier to arrive at compensation amount, subject to the following, namely:—
 - (i) The amount of compensation payable for Permanent Total Disablement as defined in Schedule I of the Workmen's Compensation Act, 1923 (8 of 1923) shall be determined by application of appropriate multiplier to proved income, subject to maximum of Rs. 10 lakhs.
 - (ii) The amount of compensation so arrived shall be reduced by 1/3rd in respect of fatal accidents (reduction of 1/3rd represents living expenses for deceased person, had he been alive).
5. Compensation in case of injury to non-earning persons in non-fatal accidents:—

(a) Grievous Injury	Not exceeding Rs. 50,000
(b) Non-Grievous Injury	Not exceeding Rs. 20,000.
6. Disability in non-fatal accidents in cases other than non-earning persons:—

The following compensation shall be payable in case of disability to the victim rising out of non-fatal accident:—

A. Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks PLUS either of the following subject to maximum of Rs. 10.00 lakhs.

 - (i) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the appropriate Multiplier applicable to the age of the victim on the date of determining the compensation.
 - (ii) In case of Permanent Partial disablement, the amount of compensation payable shall be arrived at by multiplying the compensation payable in case of permanent total disablement as specified under item (i) above by the percentage of loss of earning capacity caused by that injury.

B. For injuries deemed to result in permanent total disablement / permanent partial disablement as per section 145 (h), the percentage of loss of earning capacity shall be as per Schedule I of the Workmen's Compensation Act, 1923.

7. General damages in case of death:—

(i) Pain and suffering	Up to Rs. 5,000
(ii) Loss of consortium, if beneficiary is the spouse	Up to Rs. 10,000
(iii) Loss of estate	Up to Rs. 5,000
(iv) Medical expenses – incurred before the death duly supported by bills/vouchers.	Not exceeding Rs. 50,000

8. General damages in case of disability in non fatal accidents:—

(i) Pain and suffering – non grievous injury	Up to Rs. 5,000
(ii) Pain and suffering – grievous injury	Up to Rs. 20,000
(iii) Medical expenses – incurred before the death duly supported by bills/vouchers.	Not exceeding Rs. 50,000".

STATEMENT OF OBJECTS AND REASONS

The Motor Vehicles Act, 1988, a principal instrument for regulating motor vehicles, has so far been amended thrice, *i.e.*, in the years 1994, 2000 and 2001, to adapt it to the technological upgradation emerging in road transport, passenger and freight movement and in motor vehicle management.

2. The process of amending the Motor Vehicles Act, 1988 was initiated in response to the suggestions and requests received from stake holders like State Governments, various transport associations, Non Governmental Organizations and citizens, for effecting changes in the Act.

3. The Bill, *inter alia*, seeks to achieve the following, namely:—

(i) to enhance penalties, wherever considered necessary, for violation of provisions of the Motor Vehicles Act, 1988 with a view to ensure road safety and discipline;

(ii) to provide for civil penalty in addition to the existing criminal liability. The amount realised by way of civil penalty shall be credited to the Solatium Fund which is to be used for the accident victims;

(iii) to confer more powers to States and Union territories;

(iv) to make regional transport authorities more responsive in discharge of their duties and responsibilities;

(v) to remove anomalies and rationalize provisions for emerging new needs and requirements;

(vi) to provide for a rationale and streamlining of provisions dealing with payment of appropriate compensation to road accident victims; and

(vii) to provide for settling of the claims directly by the insurer with a view to reduce the hardships of the accident victims and accelerate disposal of cases relating to compensation claims.

4. The Bill seeks to achieve the above-said objectives.

T. R. BAALU.

Notes on clauses

Clause 1.—seeks to provide for 'short title and commencement' of the proposed legislation.

Clause 2.—seeks to provide for definitions of certain terms and expressions like "Carriage for Persons with Disability", "common carrier", "dealer" and "multi-axle vehicle".

Clause 3.—seeks to amend section 7 (1) and 7 (2) of the Motor Vehicles Act (hereinafter referred to as the Act), to provide for the enhancement of period from one year to two years after which a holder of driving licence of Light Motor Vehicle may be eligible to get a learner's licence for transport vehicle. In sub-section (2) of section 7, it has been proposed to replace "Motor Cycle without gear" with "Motor Cycle with Engine Capacity not exceeding 50 CC or Battery-operated Motor Cycle", etc., so as to make provision in line with the definitions proposed to be inserted by this Bill.

Clause 4.—seeks to insert sub-section (5) in section 8 in the Act to include institutions/associations recognised by the State Government to test an applicant and issue driving test certificate for issuing learners' licence for driving non-transport vehicles by the licensing authority.

Clause 5.—seeks to include Automobile Associations in sub-section (3) of section 9 of the Act so as to enable it to issue an applicant a driving certificate after assessing his competence to drive in respect of non-transport vehicle before he is granted driving licence by licensing authority.

Clause 6.—seeks to amend section 10 so as to provide issuance of driving licence in electronic form and provides for categories of the vehicles which a holder of driving licence is entitled to drive on the driving licence itself.

Clause 7.—seeks to amend sub-section (1) of section 15 of the Act to increase the validity period of the driving licence in consonance with section 14 of the Act and it also seeks to reduce the time from five years to one year for submitting application for renewal of driving licence.

Clause 8.—seeks to amend section 17 (2) of the Act requiring the transport authorities to decide the appeal within 45 days in case of refusal or revocation of driving licence. In case the appeal is not decided within 45 days, the transport authority shall record, in writing, the reasons for the same at the time of disposal of the appeal.

Clause 9.—seeks to insert sub-section (5) in section 21 of the Act which empowers the authority to suspend the driving licence on the spot for a period not exceeding three months if the authority is satisfied after breath analyzer test or any other test that the driver is under the influence of alcohol.

Clause 10.—seeks to insert clauses (k) and (l) in sub-section (2) of section 28 of the Act empowering the State Government to make rules for construction of driving tracks, their use and the fee to be charged for their use as well as for issue of special licence to instructor of the driving school, their qualification, and remuneration, etc.

Clause 11.—seeks to substitute sub-section (3) of section 41 of the Act so as to provide for a time limit of thirty days to issue certificate of registration in such form including electronic form and in such manner as the State Government may prescribe. It also provides for enhancement of the penalties for failing to apply for registration of motor cycle or any other motor vehicles.

Clause 12.—proposes to insert section 49A in the Act to provide for pro rata refund of the unutilised one-time tax on non-transport vehicle on its transfer to another State. The registering authority receiving the vehicle on transfer can levy and collect pro rata tax for the remaining registration period of such vehicle.

Clause 13.—seeks to substitute sub-section (7) in section 50 of the Act to provide that a registering authority shall communicate the transfer of ownership to the transferor, and to the original registering authority or to the last registering authority, as the case may be.

Clause 14.—seeks to amend sub-sections (2) and (11) in section 51 of the Act to provide for intimation to last registering authority with acknowledgment due and also making of an entry in the registration certificate of motor vehicle under hire purchase agreement and also for intimating the financer of such agreement by registered post with acknowledgment due.

Clause 15.—seeks to substitute sub-section (5) in section 52 of the Act to limit the right of altering a vehicle by the owner except with the approval of the registering authority and with the written consent of the financer if the vehicle is held under lease or hypothecation.

Clause 16.—seeks to amend sub-section (2) in section 57 of the Act to provide for appeal against the order of original authority to be decided by the prescribed authority within a period of sixty days from the date of filing of the appeal and in case the appeal is not disposed of by the prescribed authority within the period so specified he shall record, in writing the reasons for not disposing of the appeal.

Clause 17.—seeks to amend sub-section (3) of section 58 of the Act to empower the Central Government to permit plying of vehicles with gross vehicle weight in excess of those specified in the rules for such vehicles subject to conditions and modifications as may be specified by the Central Government.

Clause 18.—seeks to amend sub-section (1) of section 67 of the Act to enable the State Governments to constitute an independent regulator to fix fare and freights for stage carriages, contract carriages and goods carriages and to lay down quality of service requirements for operators, and to issue directions regarding determination of routes for plying stage carriages.

Clause 19.—seeks to omit sub-section (3) (ca) of section 68 of the Act as a provision for 'determining rules for plying stage carriages' has been included in clause 18 of the Bill.

Clause 20.—seeks to substitute sub-section 3(a) in section 71 of the Act to empower the State Government to direct a State or Regional Transport Authority to limit the number of stage carriage operating on city routes in towns.

Clause 21.—seeks to substitute sub-section (3)(a) in section 74 of the Act to empower the State Governments to direct a State or Regional Transport Authority to limit the number of contract carriages operating on city routes in town, having regard to number of vehicles, road conditions, etc.

Clause 22.—seeks to amend sub-section (8) in section 88 of the Act to empower the State Government to frame rules relating to special permits for public vehicles to ply outside the State.

Clause 23.—seeks to amend sub-section (1) (g) in section 89 of the Act so as to provide that the State Transport Appellate Authority shall decide the appeals for grant of permit within 45 days from the date of such appeal. It also provides that if the appeal is not disposed of in the specified period, the State Transport Appellate Tribunal shall record, in writing, the reasons for the same while disposing of the appeal.

Clause 24.—seeks to substitute section 93 in the Act to provide for requirement of a Registration certificate before any person engages himself as an agent, canvasser or common Carrier, etc., and imposes certain conditions on him.

Clause 25.—seeks to insert a proviso to sub-section (3) in section 100 of the Act which dispenses with the requirement of prior approval of the Central Government in case of scheme covered under inter-State agreement between two or more States.

Clause 26.—seeks to empower the Central Government by amending sub-section (1) in section 110 of the Act to make rules for design of the bodies for goods carriage and medium or heavy passenger vehicles and material to be used for such bodies, cabine design on a bare chassis, the conditions for the purpose of licensing and regulating the establishments for fabrication of bus or truck bodies on bare chassis, placement of audio-visual device in transport vehicles, seating arrangement in public service vehicles and the protection of passenger against the weather and any other matter relating to construction equipment, maintenance of motor vehicle and trailer, and fitness of all categories of motor vehicle.

Clause 27.—seeks to amend sub-section (2) in section 111 of the Act to authorise State Governments to make rules regarding installation of speed governors in transport vehicles and fog lights in motor vehicles.

Clause 28.—seeks to insert sub-section (5) in section 113 of the Act to make 'consignor' and 'common carrier' responsible for overloading of motor vehicle.

Clause 29.—seeks to amend sub-section (1) in section 114 of the Act which empowers the authorized functionary to direct the driver of vehicle to offload the excess weight at his own risk and cost.

Clause 30.—seeks to amend sub-section (1) in section 130 of the Act and insert sub-section (5) thereto, in the Act to prescribe the format of the receipt to be given to the person concerned for seizing the driving licence by any officer or authority. It also provides that the authorized officer or authority shall be required to display identity card before seizing a document from the driver or the owner of the motor vehicle.

Clause 31.—seeks to omit Chapter X containing sections 140 to 144 in the Act relating to "liability without fault in certain cases" in view of the changes proposed in the Bill for payment of compensation.

Clause 32.—seeks to substitute section 145(a) of the Act to include Insurance Regulatory and Development Authority in the definition of 'authorised insurer' for the purpose of authorising an entity for carrying out general insurance business in India. The definition of 'liability' under section 145(c) of the Act is also being modified to reflect the changes made in subsequent sections, i.e., sections 163A and 163B. In addition, the definition of 'permanent disablement' has been proposed to be included in section 145 (h) of the Act.

Clause 33.—seeks to substitute sub-section (2) in section 147 of the Act to provide for liability of Insurance Company in terms of section 163A, or for the court's award in terms of section 163B.

Clause 34.—seeks to modify section 149 of the Act relating to a policy becoming void on the grounds of non-disclosure or misrepresentation or non-receipt of premium as required under section 64VB of the Insurance Act, 1938. It also provides to relieve the insurer from the liability in case the vehicle is driven by a person not having an appropriate driving licence or in case of non-receipt of premium. Proposed sub-section (2)(c) provides that the insurer may contest the claim on any relevant ground including the quantum and sub-section (8) imposes duty on the owner of the motor vehicle involved in accident to disclose full facts to Motor Accident Claims Tribunal or civil court.

Clause 35.—seeks to insert sub-section (5) in section 151 of the Act, casting obligations on owners of the transport vehicle to keep a photocopy of driving licence of the driver employed and deliver an attested copy of the same along with an attested copy each of the registration certification and permit to the insurers on demand.

Clause 36.—seeks to amend sub-section (2) in section 157 of the Act to increase the time period from 14 days to 30 days for applying for transfer of certificate of insurance in the event of transfer of ownership of motor vehicle.

Clause 37.—intends to substitute section 161 of the Act and provides definition of certain expressions, namely, 'grievous hurt', 'hit-and-run motor accident', 'scheme' and 'solatium fund'. The solatium fund shall be established by the Central Government and used for payment of compensation for hit-and-run motor accident and the Fund shall be managed by the IRDA or any other agency specified by the Central Government. Insurance Companies shall make such contribution to the Fund as may be specified by order by the Central Government, from time to time. Further, the amount of compensation is also proposed to be increased from Rs. 25,000/- to Rs. 50,000/- in case of death of a person from hit-and-run accident, and in case of grievous hurt, the amount of compensation is proposed to be increased from Rs. 12,500/- to Rs. 25,000/-.

Clause 38.—proposes to insert section 161A in the Act, empowering the Central Government to frame scheme for Solatium Fund for giving compensation to the accident victims of hit-and-run cases. It also provides that while making such scheme, the penalties may be provided for its violation subject to limit provided therein. It also makes provision for laying of such scheme before each House of Parliament.

Clause 39.—seeks to omit section 163 of the Act regarding scheme for payment of compensation due to amendments proposed in section 161 and insertion of new section 161A.

Clause 40.—seeks to substitute section 163A of the Act providing for structured compensation formula on 'no fault principle' basis and empowering the Central Government to revise the amount specified in the Second Schedule, in view of change in prevalent cost of living.

Clause 41.—seeks to substitute section 163B of the Act to provide for compensation in cases where claimant has not opted for structured compensation formula under section 163A and desires to file the claim before the MACT or civil court. It also provides that the Motor Accident Claim Tribunal (MACT) or civil court shall endeavour to dispose of a case within two years from the date of its filing.

Clause 42.—proposes to insert section 163C to restrict a person to claim compensation either under section 163A or under section 163B and option once exercised shall be final subject to the statutory protection provided to him as regards the compensation.

Clause 43.—seeks to substitute the reference of certain sections in line with the amendments proposed under the Bill.

Clause 44.—seeks to omit the proviso to sub-section (2) of section 166, relating to application for compensation. Further, sub-sections (5) and (6) are proposed to be inserted in section 166, making enabling provisions for pending compensation cases filed under Motor Vehicles Act, 1939 and a time limit of 3 years is being prescribed for filling application from the occurrence of an accident subject to general principles provided in the Limitations Act, 1963.

Clause 45.—seeks to omit reference to Chapter X in section 167 consequent upon omission of Chapter X.

Clause 46.—propose to insert section 167A in the Act, to enable the insurer to make an endeavour to settle the claims out of a Tribunal or civil court directly with the claimant by mutual consent.

Clause 47.—seeks to omit the proviso to sub-section (1) of section 168 of the Act as it has become redundant due to proposed omission of Chapter X. Further, in sub-section (3) of section 168 of the Act, the time limit of depositing the amount of award as per the direction of Claims Tribunal has been increased from thirty days to sixty days.

Clause 48.—seeks to substitute section 171 of the Act providing for interest to be linked to 200 basis points above the bank rate as notified by the Reserve Bank of India to introduce certainty and uniformity regarding the interest on amount payable as compensation.

Clause 49.—proposes to insert a section 171A to provide for interim compensation to the victim within three months from the date of filing of an application, which shall not exceed Rs. 1,00,000/- in case of death or permanent total disablement, and Rs. 50,000/- in case of permanent partial disablement, resulting from loss of a limb or sight of either eye or grievous hurt leading to such disablement.

Clause 50.—seeks to substitute section 177 of the Act relating to general provision for punishment of offences if no penalty is provided for the offence in the Act and to enhance the quantum of penalties for contravening any provision of the Act or any rule, regulation or notification made thereunder with the penalty of Rs. 500/- for first offence and of minimum of Rs. 1000/- for second or subsequent offence, subject to a maximum of Rs. 1500/-.

Clause 51.—seeks to enhance penalties provided in section 180 of the Act relating to "allowing unauthorised person to drive vehicles" with a minimum fine of Rs. 1000/- subject to maximum of Rs. 2000/-.

Clause 52.—seeks to enhance penalties provided in section 181 of the Act pertaining to "driving vehicles in violation of section 3 or section 4 of the Act" with a minimum fine of Rs. 500/- and maximum of Rs. 2000/-.

Clause 53.—seeks to enhance penalties provided in sub-section (1) in section 183 of the Act relating to "driving at excessive speed, etc.", with a minimum fine of Rs. 500/- for first offence, and of Rs. 2000/- subject to maximum of Rs. 5,000/- for subsequent offence(s). Further, it proposes to enhance penalties under sub-section (2) of section 183 of the Act causing his employee to drive at excessive speed" with a minimum fine of Rs. 500/- for first offence, and a minimum fine of Rs. 1500/- subject to maximum of Rs. 3000/- for subsequent offence(s)."

Clause 54.—seeks to enhance penalties provided in section 184 of the Act relating to "driving dangerously" with a fine of Rs. 1000/- for first offence and a minimum fine of Rs. 2000/-, subject to maximum of Rs. 5000/- for the subsequent offence(s).

Clause 55.—seeks to enhance penalties provided in section 185 of the Act relating to "driving by a drunken person or a person under the influence of drugs" with a minimum fine of Rs. 2000/- for the first offence and of Rs. 3000/- for subsequent offence(s).

Clause 56.—seeks to enhance penalties provided in section 186 of the Act relating to "driving when mentally or physically unfit to drive" with a fine of Rs. 500/- for first offence, and Rs. 1000/- for second or subsequent offence.

Clause 57.—seeks to omit the reference of sub-section (1) (c) of section 132 occurring in section 187 of the Act, in line with the amendments proposed in the Bill.

Clause 58.—proposes to insert section 187A in the Act to introduce civil liability of a driver by providing penalty up to Rs. 5000/- if one drives a motor vehicle in rash or negligent manner, causing injury to a person or damages to any property. The amount so realised shall be credited to the Solatium Fund established under section 161A in such manner as may be prescribed.

Clause 59.—seeks to substitute sub-section (1) of section 192 of the Act relating to "using vehicle without registration" so as to enhance penalties to Rs. 4000/- with a maximum of Rs. 10,000/- for the first offence and for subsequent offence(s) to a minimum of Rs. 10,000/- and maximum of Rs. 20,000/-.

Clause 60.—seeks to substitute sub-section (1) of section 192A of the the Act relating to "using vehicles without permit" so as to enhance penalties to Rs. 4000/- with maximum of Rs. 10,000/- for first offence and for subsequent offence to minimum of Rs. 10,000/- and maximum of Rs. 20,000/-.

Clause 61.—seeks to substitute section 198 of the Act relating to "unauthorised interference with vehicle" so as to enhance penalties to Rs. 500/- with a maximum of Rs. 1000/- in case of tampering with brake or any other part of the mechanism of the motor vehicle, and to a minimum of Rs. 1000/- with a maximum of Rs. 2,500/- in case of tampering with emission control device fitted by the manufacturers.

Clause 62.—seeks to amend section 200 of the Act which relates to "composition of certain offences" section 194 relating to penalty for overloading is being deleted from this section, and section 192A relating to use of vehicle without permit is being inserted in this section.

Clause 63.—proposes to insert section 213A in the Act empowering the State Governments to appoint officers for auditing the 'authorised testing stations' set up under sub-section (2) of section 56 of the Act which provides for regulation and control of such stations or garages, and to make rules to regulate qualifications, powers and functions of the officers notified for such auditing.

Clause 64.—proposes to insert section 217B in the Act so as to provide that in respect of pending claims, the right of a person injured in road accident upon his death, be available to the legal representative.

Clause 65.—seeks to substitute Second Schedule to the Act under section 163A of the Act providing for revised structured compensation formula to decide the amount of compensation to be given to the road accident victims.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill empowers the State Governments to make rules for construction of driving tracks, their use and the fee to be charged for their use as well as for issue of special licence to instructor of the driving school, their qualification, and remuneration, etc.

Clause 11 of the Bill empowers the Central Government to make rules for issuance of registration certificate in such form including the electronic form.

Clause 18 of the Bill empowers State Governments to constitute an independent regulator to fix fare and freights for stage carriages, contract carriages and goods carriages, to lay down quality of service requirements for operators and also to issue directions regarding determination of routes for plying stage carriages.

Clause 22 of the Bill empowers State Governments for framing of rules for special permits for public vehicles to ply outside the State without counter signature.

Clause 25 of the Bill delegates powers to State Governments to notify the scheme covered under Inter-State Agreement between two or more States.

Clause 26 of the Bill empowers the Central Government to make rules for design of the bodies for goods carriage and medium or heavy passenger vehicles and material to be used for such bodies, cabin design on a bare chassis, the conditions for the purpose of licensing and regulating the establishments for fabrication of bus or truck bodies on bare chassis, placement of audio-visual device in transport vehicles, seating arrangement in public service vehicles and the protection of passenger against the weather and any other matter relating to construction equipment, maintenance of motor vehicle and trailer, and fitness of all categories of motor vehicle.

Clause 27 of the Bill empowers State Governments to make rules regarding installation of speed governors in transport vehicles and fog lights in motor vehicles.

Clauses 37 and 38 of the Bill provide for establishment, vesting and management of the Solatium Fund by the Central Government.

2. The matters in respect of which rules may be made under the aforesaid provision are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill. The rules made under the Bill are also required to be laid before Parliament and State Legislature. The delegation of legislative power is, therefore, of a normal character.

II

BILL No. XXXVII OF 2007

A Bill to provide for the establishment of Gram Nyayalayas for the purposes of providing access to justice, both civil and criminal, to the citizens at the grass-roots level and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gram Nyayalayas Act, 2007.
- (2) It extends to the whole of India except the State of Jammu and Kashmir, the State of Nagaland, the State of Arunachal Pradesh, the State of Sikkim and to the tribal areas.

Short title,
extent and
commencement.

Explanation.—In this sub-section, the expression “tribal areas” means the areas specified in Parts I, II, II A, and III of the table below paragraph 20 of the Sixth Schedule to the Constitution within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram, respectively.

(3) It shall come into force on such date as the Central Government may, by notification published in the Official Gazette, appoint, and different dates may be appointed for different States.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “Gram Nyayalaya” means a subordinate court established under sub-section (1) of section 3;

(b) “Gram Panchayat” means an institution (by whatever name called) of self-government constituted, at the village level, under article 243B of the Constitution, for the rural areas;

(c) “High Court” means,—

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

(d) “notification” means a notification published in the Official Gazette and the expression “notified” shall be construed accordingly;

(e) “Nyayadhikari” means the presiding officer of a Gram Nyayalaya appointed under sub-section (2) of section 5;

(f) “Panchayat at intermediate level” means an institution (by whatever name called) of self-government constituted, at the intermediate level, under article 243B of the Constitution, for the rural areas in accordance with Part IX of the Constitution;

(g) “prescribed” means prescribed by rules made under this Act;

(h) “State Government”, in relation to a Union territory, means the administrator thereof appointed under article 239 of the Constitution and any reference to “Governor” shall be construed as a reference to the administrator of such Union territory;

(i) all other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 shall have the meanings respectively assigned to them in those Codes.

5 of 1908.
2 of 1974.

CHAPTER II

GRAM NYAYALAYA

**Establishment
of Gram
Nyayalayas.**

3. (1) The State Government shall, for securing access to justice, both civil and criminal, at the grass-roots level to the citizens, by notification, establish one or more Gram Nyayalayas for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Gram Panchayats:

Provided that where the State Government is of opinion that there is a need to establish additional Gram Nyayalayas for any Panchayat at intermediate level it shall, in consultation with the High Court, by notification, establish such additional Gram Nyayalayas as it deems fit.

(2) The Gram Nyayalayas established under sub-section (1) shall be in addition to the civil and criminal courts established under any other law for the time being in force.

(3) A Gram Nyayalaya shall be the lowest court of subordinate judiciary in the State.

4. The headquarters of every Gram Nyayalaya shall be located at the headquarters of the intermediate Panchayat in which the Gram Nyayalaya is established or such other place as may be notified by the State Government.

Headquarters of Gram Nyayalaya.

5. (1) Every Gram Nyayalaya established under sub-section (1) of section 3 shall be presided over by a Nyayadhikari.

Appointment of Nyayadhikari.

(2) The Nyayadhikari shall be appointed by the Governor of the State in consultation with the High Court in accordance with the rules made in this behalf.

6. (1) A person shall not be qualified to be appointed as a Nyayadhikari unless he—

Qualifications for appointment.

(a) is eligible to be appointed as a Judicial Magistrate of the first class; and

(b) belongs to the cadre of Nyayadhikaris constituted by the Governor in consultation with the High Court under section 7.

(2) While appointing a Nyayadhikari, representation shall be given, as far as practicable, to the members of the Scheduled Castes and Scheduled Tribes, women and any other classes or communities as may be specified by the State Government from time to time.

7. The Governor shall, in consultation with the High Court, constitute a cadre of Nyayadhikaris comprising of persons with integrity and fulfilling the following, namely:

Constitution of cadre of Nyayadhikaris of Gram Nyayalayas.

(a) he should possess a degree in law from a recognised University;

(b) he should not be more than forty-five years of age at the time of appointment;

(c) he should have proficiency in at least one official language of the State other than English.

8. (1) A Nyayadhikari may be removed from his office on the ground of incompetence, gross negligence, corruption, malfeasance or conduct unbecoming of a Nyayadhikari.

Removal of Nyayadhikari.

(2) Any person who has been removed from the office of Nyayadhikari shall be ineligible for appointment under the Government.

9. The salary and allowances payable to and the other terms and conditions of service of the Nyayadhikaris shall be such as may be prescribed by the State Government.

Terms and conditions of Nyayadhikaris.

10. The Nyayadhikari shall not participate in the proceedings of the Gram Nyayalaya if he has any interest or is involved in the subject matter of the dispute pending consideration or is related to one of the parties to the proceeding and in such a case the Nyayadhikari shall refer the matter to the District Judge or Sessions Judge, as the case may be, for transfer of the case to any other Gram Nyayalaya.

Nyayadhikari not to participate in proceedings in which he is interested.

11. (1) The Nyayadhikari shall periodically visit the villages falling under his jurisdiction and conduct proceedings (including taking of evidence, deciding of cases and the holding of mobile court if considered necessary) at any place which it considers is in close proximity to the place where the parties ordinarily reside or where the whole or part of the cause of action had arisen:

Nyayadhikari to hold mobile courts and conduct proceedings in villages.

Provided that where the Gram Nyayalaya decides to hold mobile court outside its headquarters, it shall give wide publicity as to the date and place where it proposes to hold mobile court.

(2) The State Government shall extend all facilities to the Gram Nyayalaya including the provision of vehicles for holding mobile court and additional security for the Nyayadhikari while conducting proceedings outside its headquarters.

12. Every Gram Nyayalaya established under this Act shall use a seal of the court in such form and dimensions as may be prescribed by the State Government.

Seal of Gram Nyayalaya.

CHAPTER III

JURISDICTION, POWERS AND AUTHORITY OF GRAM NYAYALAYA

Limits of jurisdiction of Gram Nyayalayas.

13. The State Government shall, by notification, define the local territorial limits of the jurisdiction of any Gram Nyayalaya in consultation with the High Court and may, from time to time, depending on the workload, alter or readjust the local territorial limits in like manner.

2 of 1974.

Criminal jurisdiction.

14. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, the Gram Nyayalaya may take cognizance of an offence on a complaint or on a police report and shall—

(a) try all offences specified in Part I of the First Schedule; and

(b) try offences and grant relief specified under the enactments specified in Part II of that Schedule:

Provided that where the Gram Nyayalaya, at any stage of the trial, is of the opinion that the accused should be sentenced to imprisonment exceeding one year, it may forward the case to the court of session for referring it to the court of competent jurisdiction.

(2) Without prejudice to the provisions of sub-section (1), the Gram Nyayalaya shall also try all offences under the Central Acts where—

(i) the maximum punishment provided for is imprisonment not exceeding one year, whether with or without fine;

(ii) the punishment provided for is only fine;

(iii) the offences are compoundable, whether with or without the permission of the court, under the Code of Criminal Procedure, 1973 or under any other law for the time being in force.

2 of 1974.

(3) Without prejudice to the provisions of sub-sections (1) and (2), the Gram Nyayalaya shall also try all such offences or grant such relief under the State Acts by including them in Part III of the First Schedule.

Civil jurisdiction.

15. (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of the Code of Civil Procedure, 1908 and sub-section (2), the Gram Nyayalayas shall have jurisdiction to try all original suits and proceedings of such categories and subject to such pecuniary limits as may be notified by the High Court from time to time.

5 of 1908.

(2) The Gram Nyayalaya shall be the lowest court of competent jurisdiction to hear and dispose of suits of a civil nature falling under the classes of disputes specified in the Second Schedule.

Power to amend Schedules.

16. (1) Where the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, add to or omit any item from the First Schedule or the Second Schedule, as the case may be, and thereupon the First Schedule, or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

(3) If the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with the High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

(4) Every notification issued under sub-section (3) shall be laid before the State Legislature.

2 of 1974.
5 of 1908.

17. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or the Code of Civil Procedure, 1908, or any other law for the time being in force and subject to the provisions of this Act, a Gram Nyayalaya shall have exclusive jurisdiction in respect of disputes covered by the subject matters specified in sections 14 and 15.

Gram Nyayalaya to have exclusive civil and criminal jurisdiction in certain matters.

18. Notwithstanding anything contained in section 13, section 14 or section 15, the Gram Nyayalaya shall not have jurisdiction to take cognizance of the following classes of disputes, namely:—

Certain disputes not to be tried by Gram Nyayalayas.

- (a) a dispute by or against the Central Government or the State Government or a public servant for anything which is in good faith done or purported to have been done by him in his official capacity;
- (b) a dispute where one of the parties is a minor or a person of unsound mind;
- (c) any claim cognizable by revenue courts.

19. If the Nyayadhikari is satisfied that it is necessary in the interest of justice to close a case, it may, on its own motion or on an application by either party to the civil dispute, pass orders closing the case, and advise the parties to approach the appropriate civil court in respect of matters relating to any complicated issue of fact or law which should be decided by any other competent court of law.

Gram Nyayalayas to close a case in certain circumstances.

Provided that whenever a case is closed by the Nyayadhikari under this section, the period for which the case has been pending in it shall be excluded for the purposes of computing the period of limitation.

36 of 1963.
2 of 1974.

20. The provisions of the Limitation Act, 1963, and the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 shall be applicable to the Gram Nyayalaya.

Limitation.
Transfer of pending cases.

21.(1) The District Court may, with effect from such date as may be notified, transfer all the cases pending before the court subordinate to it, both civil and criminal, to the Gram Nyayalaya competent to hear and try.

(2) The Gram Nyayalaya may in its discretion continue with the cases from the stage at which it was pending before the court from which it was transferred or it may *de novo* hear or try the case, as the case may be.

Duties of ministerial officers.

22. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the Gram Nyayalaya in the discharge of its functions and provide the Gram Nyayalaya with such officers and other employees as it may think fit.

(2) The salaries and allowances payable to and the other conditions of service of the officers and other employees of the Gram Nyayalaya shall be such as may be prescribed by the State Government.

(3) The officers and other employees of a Gram Nyayalaya shall perform such duties as may, from time to time, be assigned to them by the Nyayadhikari.

CHAPTER IV

PROCEDURE IN CRIMINAL CASES

2 of 1974.

23. (1) Subject to the provisions of sub-section (2), the provisions of the Code of Criminal Procedure, 1973 and the rules made thereunder shall apply to the proceedings in respect of criminal cases triable by the Gram Nyayalaya under this Act.

Gram Nyayalaya to follow summary procedure.

2 of 1974.

(2) While exercising criminal jurisdiction, the Gram Nyayalaya shall follow the procedure for summary trials and the provisions of sections 262 to 265 (both inclusive) of the Code of Criminal Procedure, 1973 shall apply accordingly.

(3) The trial of offences by the Gram Nyayalaya under this Act shall be, as far as may be, on a day-to-day basis and every case shall be disposed of within a period of ninety days from the date of its institution.

Pronouncement of judgment.

24. (1) The Gram Nyayalaya shall pronounce its judgment within one week from the last date of its hearing.

(2) The Gram Nyayalaya shall deliver a copy of its judgment immediately to both the parties free of cost.

(3) The Gram Nyayalaya shall, in cases where imprisonment has been awarded, forward copies of the judgment along with the warrant of commitment to the officer-in-charge of the jail concerned, the police station concerned, and the Sessions Judge having jurisdiction.

Power of Gram Nyayalayas to transfer cases.

25. If at any stage of the proceedings it appears to the Gram Nyayalaya that the case is one which ought to be tried by a Judicial Magistrate of the first class or any other superior court, or if at the close of a trial, the Gram Nyayalaya is of the opinion that the accused is guilty and that he ought to receive a punishment more severe than that which the Gram Nyayalaya is empowered to impose, it shall submit the case to the appropriate Magistrate having jurisdiction who shall transfer the case to his own court and proceed according to law.

Legal aid to parties.

26. (1) The State Government shall appoint in each Gram Nyayalaya one or more advocates for the purpose of conducting the criminal cases in the Gram Nyayalaya.

(2) Notwithstanding anything contained in sub-section (1) or in the Code of Criminal Procedure, 1973, in a criminal proceeding before the Gram Nyayalaya, the complainant may, engage an advocate of his choice and at his expense to present the case of the prosecution with the leave of the Gram Nyayalaya.

2 of 1974.

(3) The State Legal Services Authority, constituted under section 6 of the Legal Services Authorities Act, 1987, shall prepare a panel of advocates and assign at least two of them to be attached to each Gram Nyayalaya so that their services shall be readily available to the parties, if they so desire.

39 of 1987.

Power to compound cases.

27. Any offence cognizable by a Gram Nyayalaya under this Act may be compounded with its permission, if such offence is compoundable with or without the permission of the court under any law for the time being in force.

Gram Nyayalayas not to take cognizance of certain offences.

28. The Gram Nyayalaya shall not take cognizance of any offence which is punishable with imprisonment for more than one year or if the accused has been previously convicted and sentenced to suffer imprisonment for a term of one year or more.

Power of Gram Nyayalayas to order amount of fine to be applied for certain expenses.

29. In imposing any fine, the Gram Nyayalaya may direct that the whole or any portion of the fine recovered shall be applied—

(a) towards defraying the expenses incurred in the case by the complainant; or

(b) in giving compensation to the victim of an offence or to a person for any material loss or damage caused to him by reason of commission of the offence.

CHAPTER V

PROCEDURE IN CIVIL CASES

Duty of Gram Nyayalaya to make efforts for conciliation and settlement of civil disputes.

30. (1) In every suit or proceeding of a civil nature instituted endeavour shall be made by the Gram Nyayalaya in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit or proceeding, as the case may be, and for this purpose a Gram Nyayalaya may, subject to the rules made by the High Court in this behalf, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Gram Nyayalaya that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceedings for such period as it thinks fit to enable them to make attempts to effect such a settlement.

(3) Where any proceeding is adjourned under sub-section (2), the Gram Nyayalaya may in its discretion refer the matter to one or more conciliators for effecting a settlement between the parties.

(4) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Gram Nyayalaya to adjourn the proceedings.

31. (1) For the purposes of section 30, the District Judge shall, in consultation with the District Magistrate, prepare a panel consisting of the names of social workers at the village level having integrity for appointment as Conciliators who possess such qualifications and experience as may be prescribed by the High Court.

Appointment of Conciliators.

(2) The sitting fee and other allowances payable to and the other terms and conditions of engagement of Conciliators shall be such as may be prescribed by the State Government.

Procedure generally.

32. (1) Subject to the other provisions of this Act, and the rules made thereunder, the Gram Nyayalaya shall be deemed to be a civil court and shall have all the powers of such court for dealing with the suits of a civil nature.

5 of 1908.
1 of 1872.

(2) The Gram Nyayalaya shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 or the rules of evidence as laid down in the Indian Evidence Act, 1872, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and any rule made by the High Court, the Gram Nyayalaya shall have the power to regulate its own procedure including the fixing of places and times of its proceedings.

(3) In respect of matters of a civil nature for which no express provision has been made in this Act, the High Court may, by rules, provide for them.

Special procedure in civil disputes.

33. (1) Notwithstanding anything contained in any other law relating to the court fee, any person desirous of settlement of any dispute or matter of a civil nature referred to in the Second Schedule may make an application to the Gram Nyayalaya in such form and in such manner as may be prescribed by the High Court and accompanied by a fee of one hundred rupees or such other amount as may be prescribed by the High Court from time to time.

(2) The Gram Nyayalaya shall issue a notice accompanied by a copy of the application served on the opposite party in such manner as may be prescribed by the High Court fixing a date for his appearance or to file a written reply.

(3) After the opposite party files his written reply, the Gram Nyayalaya shall fix a date for hearing and inform all the parties to be present in person or through their advocates or authorised agents.

(4) On the date fixed for hearing, the Gram Nyayalaya shall hear both the parties in regard to their respective contentions and if the dispute does not require recording of any evidence, pronounce the decision.

(5) In case any of the parties to the dispute desires to produce oral or documentary evidence, or both, and the Gram Nyayalaya is of the opinion that the dispute involves questions of fact which have to be decided by recording oral or documentary evidence for a just decision, the Gram Nyayalaya shall record the summary of evidence, if any, on a date fixed for hearing.

5 of 1908.

(6) Notwithstanding that the procedure laid down in the Code of Civil Procedure, 1908 shall not be applicable to civil disputes or claims before the Gram Nyayalaya, the Gram Nyayalaya shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a claim or dispute in respect of the following matters, namely:—

- (i) summoning and enforcing attendance of any person or witness and examining him on oath;
- (ii) requiring the discovery and production of any document or other material object producible as evidence;

- (iii) receiving of evidence on affidavits;
- (iv) dismissing an application for default or deciding it *ex parte*;
- (v) any other matter which may be prescribed by the State Government.

(7) The Gram Nyayalaya shall have the power to proceed *ex parte* if any of the parties does not appear.

(8) In regard to any incidental matter that may arise during the course of the proceedings, the Gram Nyayalaya shall adopt such procedure as it may deem just and proper in the interest of justice.

(9) The proceedings shall, as far as is practicable, be consistent with the interests of justice and the hearing shall be continued on a day to day basis until its conclusion, unless the Gram Nyayalaya finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded in writing.

(10) The Gram Nyayalaya shall pronounce the judgment within a period of ninety days from the date of statement of claim application, and within one week of the last day of hearing of the case.

(11) The judgment shall contain the number of the application, the names of the parties, the particulars of the claim, the points for determination, the summary of evidence adduced on either side, if any, and the findings reached by the Gram Nyayalaya.

(12) A copy of the order shall be delivered to both the parties within three days on payment of such fees as may be prescribed by the State Government.

Transfer of civil disputes.

34. The District Judge having jurisdiction may, on an application made by any party or when there is considerable pendency with one Gram Nyayalaya or whenever he considers it necessary in the interests of justice, transfer any case pending before a Gram Nyayalaya to any other Gram Nyayalaya within his jurisdiction.

Payment of interest in money decrees.

35. (1) Where in any claim for money due the Gram Nyayalaya passes an order for payment of money, it may also order payment of interest thereon at a rate not exceeding twelve per cent. per annum from the date of the claim statement application till the date of payment.

(2) The Gram Nyayalaya may, if it deems fit, direct payment in instalments with or without interest.

Power of the Gram Nyayalaya to issue commissions.

36. The Gram Nyayalaya shall have all the powers of the civil court to issue commission and the provisions of sections 75 to 78 of the Code of Civil Procedure, 1908 shall apply as if for the words "the Court" or "any Court" referred to therein, the words "the Gram Nyayalaya" had been substituted. 5 of 1908.

Proceedings to be in the official language of the State.

37. The proceedings before the Gram Nyayalaya and its judgment shall, as far as practicable, be in one of the official languages of the State other than the English language.

Evidence to be on oath.

38. The evidence given orally before a Gram Nyayalaya shall be on oath or on solemn affirmation.

Gram Nyayalayas to have the power of Judicial Magistrate of the first class for summoning any person.

39. (1) The Gram Nyayalaya shall have the powers of a Judicial Magistrate of the first class in respect of all matters relating to summons, securing the presence of witnesses, attendance of persons confined or detained in prisons, production of any material evidence including any records, title deeds, agreements, contracts, and any other thing, object or such relevant material as it may deem fit.

CHAPTER VI

PROCEDURE GENERALLY

37. The proceedings before the Gram Nyayalaya and its judgment shall, as far as practicable, be in one of the official languages of the State other than the English language.

38. The evidence given orally before a Gram Nyayalaya shall be on oath or on solemn affirmation.

39. (1) The Gram Nyayalaya shall have the powers of a Judicial Magistrate of the first class in respect of all matters relating to summons, securing the presence of witnesses, attendance of persons confined or detained in prisons, production of any material evidence including any records, title deeds, agreements, contracts, and any other thing, object or such relevant material as it may deem fit.

(2) Where any person has been given notice or summon to appear before the Gram Nyayalaya, the Gram Nyayalaya shall record his statement and thereafter the Gram Nyayalaya may dispense with his attendance at the hearing of the case.

CHAPTER VII

APPEALS

40. (1) An appeal against any order or sentence passed by a Gram Nyayalaya in a criminal matter shall lie to the Court of Sessions exercising jurisdiction over the area within which the Gram Nyayalaya is situated, within thirty days of the passing of such order or sentence.

Appeal in
criminal cases.

(2) An appeal preferred under sub-section (1) shall be heard and disposed of by an Assistant Sessions Judge subordinate to the Sessions Judge within six months from the date of filing of the appeal.

(3) The Assistant Sessions Judge may, pending disposal of the appeal, direct the suspension of the sentence or order appealed against.

(4) The decision of the Assistant Sessions Judge under sub-section (2) shall be final and no appeal or revision shall lie from the decision of the Assistant Sessions Judge.

41. (1) An appeal against any final order or judgment passed by a Gram Nyayalaya in a civil matter shall lie to the District Court exercising jurisdiction over the area within which the Gram Nyayalaya is situated within thirty days of the passing of such order or judgment.

Appeal in civil
cases.

(2) An appeal preferred under sub-section (1) shall be heard and disposed of by the Senior Civil Judge subordinate to the District Judge, within six months from the date of filing of the appeal.

(3) The District Court may, pending disposal of the appeal, direct the suspension of the order or judgment appealed against.

(4) The decision of the Senior Civil Judge under sub-section (2) shall be final and no appeal or revision shall lie from the decision of the Senior Civil Judge.

CHAPTER VIII

MISCELLANEOUS

42. (1) The Gram Nyayalaya shall not try any civil matter which is the subject matter of any proceeding pending or disposed of by a competent court unless it is a pending case transferred to it by the District Court under section 21.

Cases pending
in or disposed
of by other
courts.

(2) Where a case is pending in any court against an accused person in respect of any offence or where an accused person has been tried for any offence, the Gram Nyayalaya shall not take cognizance of any such offence or on the same facts, or any other offence of which the accused might have been charged or convicted.

43. (1) Every police officer functioning within the local limits of jurisdiction of a Gram Nyayalaya shall be bound to assist the Gram Nyayalaya in the exercise of its lawful authority.

Assistance of
police to Gram
Nyayalayas.

(2) Whenever the Gram Nyayalaya, in the discharge of its functions, requests revenue or police officer or a Government servant to provide assistance to the Gram Nyayalaya, he shall be bound to provide such assistance.

44. The Nyayadhikaris and the officers and other employees of the Gram Nyayalayas shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Nyayadhikaris
and employees,
etc., to be
public servants.

Inspection
of Gram
Nyayalayas.

45. The District Judge shall authorise any Senior Civil Judge or Assistant Sessions Judge to inspect the Gram Nyayalayas within his jurisdiction once in every six months or such other period as the High Court may specify and issue such instructions, as he considers necessary and submit a report to the High Court.

Power to
remove
difficulties.

46. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Power of High
Court to make
rules.

47. (1) The High Court may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the receipt and custody of all documents and records by or on behalf of the Gram Nyayalaya and the grant of judgment, orders and other records;

(b) the place and the manner in which the proceedings of the Gram Nyayalaya shall be conducted;

(c) the manner in which any process is issued by the Gram Nyayalaya;

(d) the particulars of the registers and records to be maintained by the Gram Nyayalaya;

(e) the conduct of training programme for the Nyayadhikaris and Conciliators of the Gram Nyayalayas;

(f) the supervision and inspection of the Gram Nyayalayas in respect of specified matters;

(g) rules regulating the procedure for assisting, persuading or conciliation of parties in arriving at a settlement in a suit or proceeding under sub-section (1) of section 30;

(h) the detailed procedure for conduct of civil suits under sub-sections (1) and (3) of section 30;

(i) the conditions which a person shall fulfil to be eligible to be included in the panel of Conciliators under sub-section (1) of section 31;

(j) the form and the manner of service of notice under sub-section (2) of section 33;

(k) any other matter not being a matter specified in section 48 in respect of which rules are required to be made by the High Court for carrying out the provisions of this Act.

Power of State
Government
to make rules.

48. (1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the rules relating to appointment of the Nyayadhikari under sub-section (2) of section 5;

(b) the salary and allowances payable to and the other terms and conditions of service of Nyayadhikaris under section 9;

- (c) the form and dimensions of the seal of the Gram Nyayalaya under section 12;
- (d) the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees of the Gram Nyayalayas under sub-section (2) of section 22.
- (e) the sitting fee and other allowances payable to and the other terms and conditions of engagement of Conciliators under sub-section (2) of section 31;
- (f) the fee payable in respect of copies of orders of the Gram Nyayalaya under sub-section (12) of section 33;
- (g) any other matter which may be prescribed or in respect of which rules are required to be made by the State Government.

(3) Every rule made by the State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

THE FIRST SCHEDULE
[See sections 14 and 16]

PART I

OFFENCES UNDER THE INDIAN PENAL CODE (45 OF 1860)

- (i) Sections 109 to 113 in so far as they relate to the offences mentioned at sub-item (ii).
- (ii) Sections 120B (relating to any other criminal conspiracy), 137, 138, 140, 143, 149, 150, 151, 153, 154, 155, 156, 157, 158 (being hired to take part in an unlawful assembly or riot except in case of going with arm), 160, 163, 166, 168, 171, 171E, 171F, 171G, 171H, 171-I, 172, 173, 174, 175, 176, 177 (relating to knowingly furnishing false information to a public servant), 178, 179, 180, 182, 183, 184, 185, 186, 187, 188, 190, 202, 225B, 228, 264, 265, 266, 267, 269, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 294, 294A, 296, 297, 298, 309, 323, 334, 336, 337, 341, 342, 352, 357, 358, 374, 417, 426, 434, 447, 448, 482, 486, 489, 489E, 491, 508, 509 and 510.
- (iii) Sections 125, 324, 332, 353, 379, 427, 428, 429, 430, 431, 432 and 504.

PART II

OFFENCES AND RELIEF UNDER THE OTHER CENTRAL ACTS

- (i) The Protection of Civil Rights Act, 1955 (22 of 1955).
- (ii) The Bonded Labour System (Abolition) Act, 1976 (19 of 1976).
- (iii) The Protection of Women from Domestic Violence Act, 2005 (43 of 2005).
- (iv) The Minimum Wages Act, 1948 (9 of 1948).
- (v) The Payment of Wages Act, 1936 (4 of 1936).
- (vi) Order for maintenance of Wives, Children and Parents under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974).
- (vii) The Equal Remuneration Act, 1976 (25 of 1976).

PART III

OFFENCES UNDER THE STATE ACTS

(To be notified by the concerned State Government)

THE SECOND SCHEDULE

[See sections 15 (2) and 16]

PART I
SUITS OF A CIVIL NATURE
WITHIN THE JURISDICTION OF GRAM NYAYALAYAS(i) *Civil Disputes:*

- (a) Right to purchase of property;
- (b) Use of common pasture;
- (c) Regulation and timing of taking water from irrigation channel.

(ii) *Property Disputes:*

- (a) Village and farm houses (Possession);
- (b) Water channels;
- (c) Right to draw water from a well or tube well.

(iii) *Other Disputes:*

- (a) Claims under the Minimum Wages Act, 1948 (9 of 1948);
- (b) Claims under the Payment of Wages Act, 1936 (4 of 1936);
- (c) Money suits either arising from trade transaction or money lending;
- (d) Disputes arising out of the partnership in cultivation of land;
- (e) Disputes as to the use of forest produce by inhabitants of Gram Panchayats.

PART II

CLAIMS AND DISPUTES UNDER THE CENTRAL ACTS NOTIFIED UNDER
SUB-SECTION (1) OF SECTION 14 BY THE CENTRAL GOVERNMENT

PART III

CLAIMS AND DISPUTES UNDER THE STATE ACTS
NOTIFIED UNDER SUB-SECTION (2) OF SECTION 14 BY
THE STATE GOVERNMENT*(To be notified by the concerned State Government)*

STATEMENT OF OBJECTS AND REASONS

Access to justice by the poor and disadvantaged remains a worldwide problem despite diverse approaches and strategies that have been formulated and implemented to address it. In our country, article 39A of the Constitution directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

2. In the recent past, the Government has taken various measures to strengthen judicial system, *inter alia*, by simplifying the procedural laws; incorporating various alternative dispute resolution mechanisms such as arbitration, conciliation and mediation, conducting of *Lok Adalats*, etc. These measures are required to be strengthened further.

3. The Law Commission of India in its 114th Report on Gram Nyayalaya suggested establishment of Gram Nyayalayas so that speedy, inexpensive and substantial justice could be provided to the common man. The Gram Nyayalaya Bill, 2007 is broadly based on the recommendations of the Law Commission. The Gram Nyayalaya is to be the lowest court of subordinate judiciary in the State in respect of criminal and civil jurisdiction. The Presiding Officer of Gram Nyayalaya *i.e.* Nyayadhikari will periodically visit the villages falling under his jurisdiction and conduct proceedings at any place which he considers is in close proximity to the place where the parties ordinarily reside. The Gram Nyayalaya will function as mobile court. In order to make the system of participatory justice a reality, legal aid and mechanism of conciliation at the grass-roots level would be a part of Gram Nyayalaya.

4. Justice to the poor at their door step is a dream of the poor. Setting up of Gram Nyayalaya (at the headquarters of intermediate Panchayat) with mobility in the rural areas would bring to the people of rural areas speedy, affordable and substantial justice.

5. The Bill seeks to achieve the above objects.

H. R. BHARDWAJ.

Notes on clauses

Clause 1.— This clause provides for the short title of the proposed legislation, its extent and commencement. The proposed legislation shall not be applicable to the State of Jammu and Kashmir, the States of Nagaland, Arunachal Pradesh and Sikkim and the tribal areas specified in Parts I, II, IIA and III of the table below paragraph 20 of the Sixth Schedule to the Constitution within the States of Assam, Meghalaya, Tripura and Mizoram.

Clause 2.— This clause seeks to define certain expressions used in the Bill. The definitions of the terms "Gram Nyayalaya", "Gram Panchayat", "High Court", "Panchayat at intermediate level", are some of them. A "Panchayat at intermediate level" means an institution (by whatever name called) of self-government constituted at the intermediate level, under article 243B of the Constitution, for the rural areas in accordance with the provisions of Part IX of the Constitution.

Clause 3.— This clause provides for the establishment of one or more Gram Nyayalayas by the State Government.

Sub-clause (1) provides that for the purpose of securing access to justice, both civil and criminal at the grass-roots level to the citizens of India, the State Government shall, by notification in the Official Gazette, establish one or more Gram Nyayalayas for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Gram Panchayats. This sub-clause also empowers the State Government to establish, in consultation with the High Court, additional Gram Nyayalayas for any Panchayat at intermediate level if it is of opinion to do so.

Sub-clause (2) provides that the Gram Nyayalayas shall be in addition to the civil and criminal courts established under any other law for the time being in force.

Sub-clause (3) provides that a Gram Nyayalaya constituted under the proposed legislation shall be the lowest court of subordinate judiciary in the State.

Clause 4.— This clause provides that the headquarters of the Gram Nyayalaya shall be located at the headquarters of the Panchayat at intermediate level in which the Gram Nyayalaya is established. However, the State Government is competent to notify any other place as the headquarters of a Gram Nyayalaya.

Clause 5.— This clause seeks to provide for the appointment of the Presiding Officer of a Gram Nyayalaya. Sub-clause (1) provides that every Gram Nyayalaya established under the proposed legislation shall consist of a Nyayadhikari. Sub-clause (2) provides that the Nyayadhikari shall be appointed by the Governor of the State in consultation with the High Court in accordance with the rules made in this behalf.

Clause 6.— This clause seeks to provide for the qualifications of a person to be eligible to be appointed as a Nyayadhikari of a Gram Nyayalaya. Sub-clause (1) provides that a person shall not be qualified to be appointed as a Nyayadhikari unless he belongs to the cadre of Nyayadhikaris constituted by the Governor in consultation with the High Court and such person is eligible to be appointed as a Judicial Magistrate of the first class.

Sub-clause (2) provides that while appointing the Nyayadhikari the State Government shall provide, as far as practicable, representation to the members of the Scheduled Castes, the Scheduled Tribes, women and to any other classes or communities as may be specified by it from time to time.

Clause 7.— This clause seeks to provide for the constitution of a cadre of Nyayadhikaris of the Gram Nyayalayas in a State. The cadre of Nyayadhikaris which may be constituted by the Governor in consultation with the High Court shall consist of persons of integrity with not more than forty-five years of age at the time of appointment. Such persons should possess a degree in law from a recognised University and should have proficiency in at least one official language of the State other than English.

Clause 8.— This clause seeks to provide for the removal of Nyayadhikaris. Sub-clause (1) provides that a Nyayadhikari may be removed from office on the ground of incompetence, gross negligence, corruption, malfeasance or conduct unbecoming of a Nyayadhikari.

Sub-clause (2) provides that a person who has been removed from office of Nyayadhikari shall be ineligible for appointment under the Government.

Clause 9.— This clause seeks to empower the State Government to determine, by rules, the salary and allowances payable to and the other terms and conditions of service of the Nyayadhikaris.

Clause 10.— This clause seeks to provide that the Nyayadhikari shall not participate in certain proceedings before the Gram Nyayalaya. The Nyayadhikari shall not participate in the proceedings of the Gram Nyayalaya if he has any interest or is involved in the subject matter of the dispute pending consideration or is related to one of the parties to the proceeding and in such a case the Nyayadhikari shall refer the matter to the District Judge or Sessions Judge, as the case may be, for transfer of the case to any other Gram Nyayalaya.

Clause 11.— This clause seeks to empower the Nyayadhikari to hold mobile courts and to conduct proceedings in villages.

Sub-clause (1) seeks to provide that the Nyayadhikari shall periodically visit the villages falling under his jurisdiction and conduct proceedings (including taking of evidence, deciding of cases and the holding of mobile court if considered necessary) at any place which he considers is in close proximity to the place where the parties ordinarily reside or where the whole or part of the cause of action had arisen. In conducting such mobile courts outside the headquarters of a Gram Nyayalaya the Nyayadhikari has to give wide publicity as to the date and place where it proposes to hold mobile court.

Sub-clause (2) seeks to provide that the State Government shall be required to extend all facilities to the Gram Nyayalaya including the provision of vehicles for holding mobile court and additional security for the Nyayadhikari for enabling him to conduct the proceedings outside the headquarters of the Gram Nyayalaya.

Clause 12.— This clause seeks to provide for the seal of the Gram Nyayalaya. The State Government shall, by rules, determine the form and dimensions of the seal of the Gram Nyayalaya.

Clause 13.— This clause seeks to empower the State Government to fix the local limits of jurisdiction of the Gram Nyayalaya in consultation with the High Court. It also empowers the State Government in like manner readjust the territorial limits of the Gram Nyayalayas depending on the work load of such Nyayalayas.

Clause 14.— This clause seeks to lay down the criminal jurisdiction of the Gram Nyayalayas.

Sub-clause (1) seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, the Gram Nyayalaya shall be competent to take cognizance of an offence on a complaint or on a police report and shall try all offences specified in Part I of the First Schedule to the proposed legislation and shall also try offences and grant relief specified under the enactments specified in Part II of that Schedule. However, where the Gram Nyayalaya is of the opinion that the accused should be sentenced to imprisonment exceeding one year, it may forward the case to the Court of Session for referring it to the court of competent jurisdiction.

Sub-clause (2) provides that the Gram Nyayalaya shall also try all offences under the Central Acts where —

- (i) the maximum punishment provided for is imprisonment not exceeding one year, whether with or without fine;
- (ii) the punishment provided for is only fine;
- (iii) the offences are compoundable, whether with or without the permission of the court, under the Code of Criminal Procedure, 1973 or under any other law for the time being in force.

Sub-clause (3) provides that notwithstanding anything contained in sub-clauses (1) and (2), the Gram Nyayalaya shall also try all such offences or grant such relief under the State Acts by including them in Part III of the First Schedule to the proposed legislation.

Clause 15.— This clause seeks to lay down the civil jurisdiction of the Gram Nyayalayas.

Sub-clause (1) provides that notwithstanding anything contained in any other law for the time being in force and subject to the provisions of the Code of Civil Procedure, 1908 and sub-clause (2), the Gram Nyayalayas shall have jurisdiction to try all original suits and proceedings of such categories and subject to such pecuniary limits as may be notified by the High Court from time to time.

Sub-clause (2) provides that the Gram Nyayalaya shall be the lowest court of competent jurisdiction to hear and dispose of suits of a civil nature falling under the classes of disputes specified in the Second Schedule to the proposed legislation.

Clause 16.— This clause seeks to empower the Central Government as well as the State Government to amend the Schedules to the Act as per their legislative competence of Parliament and State Legislatures respectively.

Sub-clause (1) provides that if the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, add to or omit any item from the First Schedule or the Second Schedule, as the case may be, of the proposed legislation and thereupon the First Schedule, or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

Sub-clause (3) provides that if the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with the High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

Sub-clauses (2) and (4) provides that every notification issued under sub-section (1) by the Central Government and under sub-section (3) by the State Government shall be laid before Parliament and the State Legislature respectively.

Clause 17.— This clause seeks to provide that the Gram Nyayalayas shall have exclusive civil and criminal jurisdiction in certain matters. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, or the Code of Civil Procedure, 1908, or any other law for the time being in force and subject to the provisions of this Act, a Gram Nyayalaya shall have exclusive jurisdiction in respect of disputes covered by the subject matters specified in sections 14 and 15 of the proposed legislation.

Clause 18.— This clause seeks to provide that the Gram Nyayalayas shall not try certain disputes. It provides that notwithstanding anything contained in proposed section 13, section 14 or section 15, the Gram Nyayalaya shall not have jurisdiction to take cognizance of the certain classes of disputes. They are—

- (a) disputes by or against the Central Government or the State Government or public servants for anything which is in good faith done or purported to have been done by them in their official capacity;
- (b) a dispute where one of the parties is a minor or a person of unsound mind; and
- (c) any claim cognizable by revenue courts.

Clause 19.— This clause seeks to empower the Nyayadhikaris to close cases in certain circumstances. It provides that if the Nyayadhikari is satisfied that it necessary in the interest of justice to close a case, it may, on its own motion or on an application by either party to the civil dispute, pass orders closing the case, and advise the parties to approach the appropriate civil court in respect of matters relating to any complicated issue of fact or law which should be decided by any other competent court of law. However, whenever a case is closed by the Nyayadhikari under this clause, the period for which the case has been pending in the Gram Nyayalaya shall be excluded for the purposes of computing the period of limitation.

Clause 20.— This clause provides for the period of limitation. It provides that the provisions of the Limitation Act, 1963, and the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 shall be applicable to the proceedings before the Gram Nyayalaya.

Clause 21.— This clause provides for transfer of pending cases in subordinate courts.

Sub-clause (1) seeks to provide that the District Court may, with effect from such date as may be notified, transfer all the cases pending before the court subordinate to it, both civil and criminal, to the Gram Nyayalaya competent to hear and try.

Sub-clause (2) provides that the Gram Nyayalaya may in its discretion continue with the cases from the stage at which it was pending from the court from which it was transferred or it may *de novo* hear or try the case, as the case may be.

Clause 22.— This clause deals with the duties of ministerial officers of the Gram Nyayalayas.

Sub-clause (1) provides that the State Government shall determine the nature and categories of the officers and other employees required to assist the Gram Nyayalaya in the discharge of its functions and provide the Gram Nyayalaya with such officers and other employees as it may think fit.

Sub-clause (2) seeks to empower the State Government to determine by rules the salaries and allowances payable to and the other conditions of service of the officers and other employees of the Gram Nyayalayas.

Sub-clause (3) seeks to empower the Nyayadhikari to assign from time to time the duties to be performed by the officers and other employees attached to a Gram Nyayalaya.

Clause 23.— This clause seeks to provide that the Gram Nyayalayas shall follow summary procedure.

Sub-clause (1) seeks to provide that subject to the provisions of sub-clause (2), the provisions of the Code of Criminal Procedure, 1973 and the rules made thereunder shall apply to the proceedings in respect of criminal cases triable by the Gram Nyayalaya under the proposed legislation.

Sub-clause (2) provides that while exercising criminal jurisdiction, the Gram Nyayalaya shall follow the procedure for summary trials and the provisions of sections 262 to 265 (both inclusive) of the Code of Criminal Procedure, 1973 shall apply accordingly.

Sub-clause (3) provides that the trial of offences by the Gram Nyayalaya shall be as far as may be, on a day-to-day basis and a case shall be disposed of within a period of ninety days from the date of its institution.

Clause 24.— This clause deals with the pronouncement of judgment by the Gram Nyayalayas.

Sub-clause (1) provides that the Gram Nyayalaya shall pronounce its judgment within one week from the last date of its hearing.

Sub-clause (2) provides that the Gram Nyayalaya shall deliver a copy of its judgment immediately to both the parties free of cost.

Sub-clause (3) provides that the Gram Nyayalaya shall, in cases where imprisonment has been awarded, forward copies of the judgment along with the warrant of commitment to the officer-in-charge of the jail concerned, the police station concerned, and the Sessions Judge having jurisdiction.

Clause 25.— This clause deals with the power of Gram Nyayalayas to transfer certain cases. It provides that if at any stage of the proceedings it appears to the Gram Nyayalaya that the case is one which ought to be tried by a Judicial Magistrate of the first class or any other superior court, or if at the close of a trial, the Gram Nyayalaya is of the opinion that the accused is guilty and that he ought to receive a punishment more severe than that which the Gram Nyayalaya is empowered to impose, it shall submit the case to the appropriate Magistrate having jurisdiction who shall transfer the case to his own court and proceed according to law.

Clause 26.— This clause seeks to provide for legal aid to the parties.

Sub-clause (1) provides that the State Government shall appoint in each Gram Nyayalaya one or more advocates for the purpose of conducting the criminal cases in the Gram Nyayalaya.

Sub-clause (2) provides that notwithstanding anything contained in sub-section (1) or in the Code of Criminal Procedure, 1973, in a criminal proceeding before the Gram Nyayalaya, the complainant may, engage an advocate of his choice and at his expense to present the case of the prosecution with the leave of the Gram Nyayalaya.

Sub-clause (3) provides that the State Legal Services Authority constituted under section 6 of the Legal Services Authorities Act, 1987 shall prepare a panel of advocates and assign at least two of them to be attached to each Gram Nyayalaya so that their services would readily be available to the parties, if they so desire.

Clause 27.— This clause deals with the power of the Gram Nyayalaya to compound certain offences. It provides that any offence cognizable by a Gram Nyayalaya under the proposed legislation may be compounded with its permission, if such offence is compoundable with or without the permission of the court under any law for the time being in force.

Clause 28.— This clause seeks to lay down that the Gram Nyayalayas shall not take cognizance of certain offences. It provides that the Gram Nyayalaya shall not take cognizance of any offence which is punishable with imprisonment for more than one year or if the accused has been previously convicted and sentenced to suffer imprisonment for a term of one year or more.

Clause 29.— This clause deals with the power of Gram Nyayalayas to order amount of fine to be applied in meeting certain expenses. It provides that in imposing any fine, the Gram Nyayalaya may direct that the whole or any portion of the fine recovered shall be applied towards defraying the expenses incurred in the case by the complainant or in giving compensation to the victim of an offence or to a person for any material loss or damage caused to him by reason of commission of the offence.

Clause 30.— This clause seeks to lay down the duties of Gram Nyayalayas to make efforts for conciliation and settlement of civil disputes.

Sub-clause (1) provides that in every suit or proceeding of a civil nature instituted endeavour shall be made by the Gram Nyayalaya in the first instance, where it is possible to

do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit or proceeding, as the case may be, and for this purpose a Gram Nyayalaya may, subject to the rules made by the High Court in this behalf, follow such procedure as it may deem fit.

Sub-clause (2) provides that if, in any suit or proceeding, at any stage, it appears to the Gram Nyayalaya that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceedings for such period as it thinks fit to enable them to make attempts to effect such a settlement.

Sub-clause (3) provides that where any proceedings is adjourned under sub-clause (2) the Gram Nyayalaya may in its discretion refer the matter to one or more conciliators for effecting a settlement between the parties.

Sub-clause (4) provides that the power conferred by sub-clause (2) shall be in addition to, and not in derogation of, any other power of the Gram Nyayalaya to adjourn the proceedings.

Clause 31.— This clause seeks to provide for appointment of conciliators.

Sub-clause (1) provides that for the purposes of clause 30, the District Judge shall, in consultation with the District Magistrate, prepare a panel consisting of the names of social workers at the village level having integrity for appointment as Conciliators who possess such qualifications and experience as may be prescribed by the High Court.

Sub-clause (2) empowers the State Government to make rules laying down the rate of the sitting fee and other allowances payable to and the other terms and conditions of engagement of Conciliators.

Clause 32.— This clause seeks to provide for the procedure generally.

Sub-clause (1) provides that subject to the other provisions of the proposed legislation and the rules made thereunder, the Gram Nyayalaya shall be deemed to be a civil court and shall have all the powers of such court for dealing with the suits of a civil nature.

Sub-clause (2) provides that the Gram Nyayalaya shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 or the rules of evidence as laid down in the Indian Evidence Act, 1872, but shall be guided by the principles of natural justice and subject to the other provisions of the proposed legislation and any rule made by the High Court, the Gram Nyayalaya shall have the power to regulate its own procedure including the fixing of places and times of its proceedings.

Sub-clause (3) provides that in respect of matters of a civil nature for which no express provision has been made, the High Court may, by rules, provide for them.

Clause 33.— This clause seeks to provide for a special procedure in civil disputes.

Sub-clause (1) provides that notwithstanding anything contained in any other law relating to the Court fee, any person desirous of settlement of any dispute or matter of a civil nature referred to in the Second Schedule may make an application to the Gram Nyayalaya in such form and in such manner as may be prescribed by the High Court and accompanied by a fee of one hundred rupees or such other amount as may be prescribed by the High Court from time to time.

Sub-clause (2) provides that the Gram Nyayalaya shall issue a notice accompanied by a copy of the application served on the opposite party in such manner as may be prescribed by the High Court fixing a date for his appearance or to file a written reply.

Sub-clause (3) provides that after the opposite party files his written reply, the Gram Nyayalaya shall fix a date for hearing and inform all the parties to be present in person or through their advocates or authorised agents.

Sub-clause (4) provides that on the date fixed for hearing the Gram Nyayalaya shall hear both the parties in regard to their respective contentions and if the dispute does not require recording of any evidence, pronounce the decision.

Sub-clause (5) provides that in case any of the parties to the dispute desires to produce oral or documentary evidence, or both, and the Gram Nyayalaya is of the opinion that the dispute involves questions of fact which have to be decided by recording oral or documentary evidence for a just decision, the Gram Nyayalaya shall record the summary of evidence, if any, on a date fixed for hearing.

Sub-clause (6) provides that notwithstanding that the procedure laid down in the Code of Civil Procedure, 1908 shall not be applicable to civil disputes or claims before the Gram Nyayalaya, the Gram Nyayalaya shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a claim or dispute in respect of the following matters, namely: —

- (i) summoning and enforcing attendance of any person or witness and examining him on oath;
- (ii) requiring the discovery and production of any document or other material object producible as evidence;
- (iii) receiving of evidence on affidavits;
- (iv) dismissing an application for default or deciding it *ex parte*;
- (v) any other matter which may be prescribed by the State Government.

Sub-clause (7) provides that the Gram Nyayalaya shall have the power to proceed *ex parte* if any of the parties does not appear.

Sub-clause (8) provides that in regard to any incidental matter that may arise during the course of the proceedings, the Gram Nyayalaya shall adopt such procedure as it may deem just and proper in the interest of justice.

Sub-clause (9) provides that the proceedings shall, as far as is practicable, be consistent with the interests of justice and the hearing shall be continued on a day to day basis until its conclusion, unless the Gram Nyayalaya finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded in writing.

Sub-clause (10) provides that the Gram Nyayalaya shall pronounce the judgment within a period of ninety days from the date of statement of claim application, and within one week of the last day of hearing of the case.

Sub-clause (11) provides that the judgment shall contain the number of the application, the names of the parties, the particulars of the claim, the points for determination, the summary of evidence adduced on either side, if any, and the findings reached by the Gram Nyayalaya.

Sub-clause (12) provides that a copy of the order shall be delivered to both the parties within three days on payment of such fees as may be prescribed by the State Government.

Clause 34.— This clause seeks to provide for transfer of civil disputes. It provides that the District Judge having jurisdiction may, on an application made by any party or when there is considerable pendency with one Gram Nyayalaya or whenever he considers it necessary in the interests of justice, transfer any case pending before a Gram Nyayalaya to any other Gram Nyayalaya within his jurisdiction.

Clause 35.— This clause seeks to provide for payment of interest in case of money decrees.

Sub-clause (1) provides that where in any claim for money due the Gram Nyayalaya passes an order for payment of money, it may also order payment of interest thereon at a rate

not exceeding twelve per cent. per annum from the date of the claim statement application till the date of payment.

Sub-clause (2) provides that the Gram Nyayalaya may, if it deems fit, direct payment in instalments with or without interest.

Clause 36.— This clause seeks to provide for the powers of the Gram Nyayalayas to issue commissions. It provides that the Gram Nyayalaya shall have all the powers of the civil court to issue commission and the provisions of sections 75 to 78 of the Code of Civil Procedure, 1908 shall apply as if for the words "the Court" or "any Court" referred to therein, the words "the Gram Nyayalaya" had been substituted.

Clause 37.— This clause seeks to provide for the use of the official language of the State in proceedings before the Gram Nyayalayas. It provides that the proceedings before the Gram Nyayalaya and its judgment shall, as far as practicable, be in one of the official languages of the State other than the English language.

Clause 38.— This clause seeks to provide that the evidence given orally before a Gram Nyayalaya shall be on oath or on solemn affirmation.

Clause 39.— This clause seeks to provide that the Gram Nyayalayas shall have the powers of a Judicial Magistrate of the first class in summoning of persons.

Sub-clause (1) provides that the Gram Nyayalaya shall have the powers of a Judicial Magistrate of the first class in respect of all matters relating to summons, securing the presence of witnesses, attendance of persons confined or detained in prisons, production of any material evidence including any records, title deeds, agreements, contracts, and any other thing, object or such relevant material as it may deem fit.

Sub-clause (2) provides that where any person has been given notice or summons to appear before the Gram Nyayalaya, the Gram Nyayalaya shall record his statement and thereafter the Gram Nyayalaya may dispense with his attendance at the hearing of the case.

Clause 40.— This clause seeks to provide for appeals in criminal cases.

Sub-clause (1) provides that an appeal against any order or sentence passed by a Gram Nyayalaya in a criminal matter shall lie to the Court of Sessions exercising jurisdiction over the area within which the Gram Nyayalaya is situated, within thirty days of the passing of such order or sentence.

Sub-clause (2) provides that an appeal preferred under sub-section (1) shall be heard and disposed of by an Assistant Sessions Judge subordinate to the Sessions Judge within six months from the date of filing of the appeal.

Sub-clause (3) provides that an Assistant Sessions Judge may, pending disposal of the appeal, direct the suspension of the sentence or order appealed against.

Sub-clause (4) provides that the decision of the Assistant Sessions Judge under sub-section (2) shall be final and no appeal or revision shall lie from the decision of the Assistant Sessions Judge.

Clause 41.— This clause seeks to provide for appeals in civil cases.

Sub-clause (1) provides that an appeal against any final order or judgment passed by a Gram Nyayalaya in a civil matter shall lie to the District Court exercising jurisdiction over the area within which the Gram Nyayalaya is situated within thirty days of the passing of such order or judgment.

Sub-clause (2) provides that an appeal preferred under sub-section (1) shall be heard and disposed of by the Senior Civil Judge subordinate to the District Judge, within six months from the date of filing of the appeal.

Sub-clause (3) provides that the District Court may, pending disposal of the appeal, direct the suspension of the order or judgment appealed against.

Sub-clause (4) provides that the decision of the Senior Civil Judge under sub-clause (2) shall be final and no appeal or revision shall lie from the decision of the Senior Civil Judge.

Clause 42.— This clause seeks to make certain provisions in respect of cases pending in or disposed of by other courts.

Sub-clause (1) provides that the Gram Nyayalaya shall not try any civil matter which is the subject matter of any proceeding pending or disposed of by a competent court unless it is a pending case transferred to it by the District Court under clause 21.

Sub-clause (2) provides that where a case is pending in any court against an accused person in respect of any offence or where an accused person has been tried for any offence, the Gram Nyayalaya shall not take cognizance of any such offence or on the same facts, or any other offence of which the accused might have been charged or convicted.

Clause 43.— This clause seeks to provide for assistance of police to Gram Nyayalayas.

Sub-clause (1) provides that every police officer functioning within the local limits of jurisdiction of a Gram Nyayalaya shall be bound to assist the Gram Nyayalaya in the exercise of its lawful authority.

Sub-clause (2) provides that whenever the Gram Nyayalaya, in the discharge of its functions, requests revenue or police officer or a Government servant to provide assistance to the Gram Nyayalaya, he shall be bound to provide such assistance.

Clause 44.— This clause seeks to provide that the Nyayadhikaris and employees of the Gram Nyayalaya, etc., shall be public servants. It provides that the Nyayadhikaris and the officers and other employees of the Gram Nyayalayas shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the proposed legislation would be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 45.— This clause seeks to provide for inspection of Gram Nyayalayas. It provides that the District Judge shall authorise any Senior Civil Judge or Assistant Sessions Judge to inspect the Gram Nyayalayas within his jurisdiction once in every six months or such other period as the High Court may specify and issue such instructions, as he considers necessary and submit a report to the High Court.

Clause 46.— This clause empowers the Central Government to issue orders published in the Official Gazette making such provisions not inconsistent with the provisions of the proposed legislation for removing difficulties in giving effect to it provisions. Such orders could be issued within three years from the date of commencement of the proposed legislation. It also provides for laying of such orders before each House of Parliament.

Clause 47.— This clause seeks to empower the High Courts to make rules for carrying out the provisions of the proposed legislation. These are mainly matters of procedure.

Clause 48.— This clause confers power on the State Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the matters in respect of which rules may be made by the State Government shall be published in the Official Gazette and be laid before the State Legislature.

FINANCIAL MEMORANDUM

Clause 3 of the Bill empowers the State Governments to establish one or more Gram Nyayalayas for every Panchayat at intermediate level or for a group of contiguous Panchayats at intermediate level in every district to exercise both civil and criminal jurisdiction. Every Gram Nyayalaya shall be presided over by a Nyayadhikari. Clause 9 empowers the State Governments to lay down, by rules, the salary and allowances payable to, and the other terms and conditions of service of, the Nyayadhikaris. Clause 22 of the Bill empowers the State Government to determine the nature and categories of the officers and other employees required to assist a Gram Nyayalaya in the discharge of its functions and to lay down rules specifying the salaries and allowances payable to, and the terms and conditions of service of, the other officers and employees of the Gram Nyayalayas. Clause 26 empowers the State Government to appoint one or more advocates for each Gram Nyayalaya for the purpose of conducting the criminal cases before each such Gram Nyayalaya. Clause 31 of the Bill empowers the State Government to determine the sitting fee and other allowances payable to, and the other terms and conditions of engaging Conciliators.

2. The Central Government will meet the entire non-recurring expenditure and the recurring expenditure for first three years will be shared between the Central and State Government, following which, it will be met by the concerned State Governments. At present it will not be possible to work out the exact expenditure that may be required.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 47 empowers the High Courts to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may provide for. These matters *inter alia* include the receipt and custody of all documents and records by or on behalf of the Gram Nyayalaya and the grant of judgment, orders and other records, the place and the manner in which the proceedings of the Gram Nyayalaya shall be conducted, the manner in which any process is issued by the Gram Nyayalaya, the particulars of the registers and records to be maintained by the Gram Nyayalaya, the conduct of training programme for the Nyayadhikaris and Conciliators of the Gram Nyayalayas, the supervision and inspection of the Gram Nyayalayas in respect of specified matters, rules regulating the procedure for assisting, persuading or conciliation of parties in arriving at a settlement in a suit or proceeding under sub-clause (1) of clause 30, the detailed procedure for conduct of civil suits under sub-clauses (1) and (3) of clause 30, the conditions which a person shall fulfill to be eligible to be included in the panel of Conciliators under sub-clause (1) of clause 31 and the form and the manner of service of notice under sub-clause (1) of clause 33;

2. Clause 48 of the Bill empowers the State Governments to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made. These matters *inter alia* include the rules relating to appointment of the Nyayadhikari under sub-clause (2) of clause 5, the salary and allowances payable to and the other terms and conditions of service of Nyayadhikaris under clause 9, the form and dimensions of the seal of the Gram Nyayalaya under clause 12, the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees of the Gram Nyayalayas under sub-clause (2) of clause 22, the sitting fee and other allowances payable to and the other terms and conditions of engagement of Conciliators under sub-clause (2) of clause 31 and the fee payable in respect of copies of orders of the Gram Nyayalaya under sub-clause (12) of clause 33.

3. The rules made by the State Government are required to be laid before the State Legislature.

4. The matters in respect of rules may be made either by the High Court or by the State Government are matters of administrative details or of procedure and it is not possible to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

YOGENDRA NARAIN,
Secretary-General.